

United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles on Appeals.

(IN TWO VOLUMES.)

COMPAGNIE MARITIME FRANCAISE, a
French Corporation,

Appellant,

vs.

HERMANN L. E. MEYER, GEORGE H. C.
MEYER, HERMANN L. E. MEYER, JR.,
J. W. WILSON, and JOHN M. QUAILE,
Partners Under the Style of MEYER, WIL-
SON & COMPANY,

Appellees.

VOLUME I.
(Pages 1 to 256, Inclusive.)

Upon Appeals from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

Filed

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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(Title of Court and Causes, and Numbers.)

Praecipe for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

The libelants in the above-entitled cause numbered 13,941, and the claimants in the above-entitled cause numbered 13,959, having appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the respective final decrees of this Court entered in said causes, and all parties hereto having stipulated that the records and files of the said causes may be consolidated for the purposes of preparing Apostles on Appeal in the said causes, you are hereby requested to prepare and certify the Apostles on Appeal to be filed in said Appellate Court in due course for use in both causes on appeal, said apostles on appeal to be prepared in accordance with Rule 4 of the Rules in Admiralty of said Appellate Court; and said Apostles on Appeal to include in their proper order and form the following papers and documents, to wit:

All the matters prescribed and mentioned in Admiralty Rule No. 4 of said Appellate Court.

ANDROS & HENGSTLER,
GOLDEN W. BELL,

Proctors for Libelants in Case No. 13,941, and
Claimants in Case No. 13,959.

[Endorsed]: Filed Mar. 16, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

*Page-number appearing at foot of page of original certified Apostles on Appeal.

Statement of Clerk U. S. District Court.

*In the Southern Division of the District Court of
the United States, Northern District of Califor-
nia, First Division.*

No. 13,941.

COMPAGNIE MARITIME FRANCAISE (a
French Corporation),

Libelant,

vs.

The Cargo of the French Barque, "DUC
D'AUMALE,"

Respondent.

PARTIES.

Libelant: Compagnie Maritime Francaise (a French
Corporation).

Respondent: The Cargo of the French Barque "Duc
d'Aumale."

Claimant: Hermann L. E. Meyer, George H. C.
Meyer, H. L. E. Meyer, Jr., J. W. Wilson and
John M. Quaile, copartners, doing business un-
der the firm name and style of Meyer, Wilson
& Co. [2]

PROCTORS
for

Libelant: Messrs. Andros & Hengstler, San Fran-
cisco, California.

Respondent and Claimants: McCutchen, Olney &
Willard (formerly, Page, McCutchen & Knight),
San Francisco, California.

PROCEEDINGS.

1908.

- November 30. Filed verified libel for freight under charter-party.
Issued monition for the attachment of the cargo of said French Barque "Duc d'Aumale," which said monition has never been returned.
Filed claim of Meyer, Wilson & Co. to cargo of French Barque "Duc d'Aumale."
Filed admiralty stipulation (bond), in the sum of \$30,000.00, for release of cargo, with Fidelity & Deposit Company of Maryland, as surety.

1909.

- July 6. Filed answer of Hermann L. E. Meyer, George H. C. Meyer, Hermann L. E. Meyer, Jr., J. W. Wilson and John M. Quaile, copartners doing business under the style of Meyer, Wilson & Co., claimants of the cargo of the French Barque "Duc d'Aumale." [3]

1912.

- January 18. The Court, this day, ordered that this case be consolidated with the cause entitled, "Hermann L. E. Meyer et al., Libelants, vs. French Barque 'Duc d'Aumale,' Respondent, No. 13,959," and that this case

stand submitted upon the testimony and argument in said consolidated cause. Hon. R. S. Bean, District Judge, Presiding.

- April 15. Filed opinion (Hon. R. S. Bean, Judge) in case No. 13,959, in which it was ordered that the Charterer, Meyer, Wilson & Co., recover from owners of French Barque, "Duc d'Aumale," for damage to cargo, and that the matter be referred to U. S. Commissioner to ascertain and report the amount due.

1913.

- August 18. Filed interlocutory decree in consolidated cases (filed in case No. 13,959).

1916.

- May 6. The report of U. S. Commissioner, as to amount of damage sustained by charterers, was this day presented and ordered filed (case No. 13,959).

- June 8. Filed (in case No. 13,959) exceptions to Report of U. S. Commissioner.

- July 1. The exceptions to report of U. S. Commissioner were this day argued and submitted.

1917.

- January 29. The Court (Hon. M. T. Dooling, Judge) this day made an order overruling the exceptions to the

Commissioner's report, confirming said report, and [4] ordering that a Decree be entered in favor of Meyer, Wilson & Company, for \$2,242.72 (order filed in case No. 13,959).

- February 26. Filed final decree dismissing libel in this cause, and ordering that claimants recover their costs incurred herein.
- March 16. Filed notice of appeal.
Filed cost bond on appeal in the sum of \$250.
- April 3. Filed bond on appeal in the sum of \$1,500, staying execution, with National Surety Company, as surety thereon.
- May 9. Filed assignment of errors. [5]

Statement of Clerk U. S. District Court.

*In the Southern Division of the District Court of the
United States, Northern District of California,
First Division.*

No. 13,959.

HERMANN L. E. MEYER, GEORGE H. C.
MEYER, HERMANN L. E. MEYER, Jr.,
J. W. WILSON, and JOHN M. QUAILE,
Partners Under the Style of MEYER, WIL-
SON & COMPANY,

Libelants,

vs.

The French Bark "DUC D'AUMALE," Her
Tackle, Apparel and Furniture,
Respondent.

COMPAGNIE MARITIME FRANCAISE (a
French Corporation),

Claimant.

PARTIES.

Libelant: Hermann L. E. Meyer, George H. C.
Meyer, Hermann L. E. Meyer, Jr., J. W. Wilson
and John M. Quaile, partners under the style of
Meyer, Wilson & Company.

Respondent: The French Bark "Duc d'Aumale,"
her tackle, etc.

Claimant: Compagnie Maritime Francaise, a French
Corporation. [6]

PROCTORS

for

Libelants: McCutchen, Olney & Willard (formerly Page, McCutchen & Knight), San Francisco, California.

Respondent and Claimant: Messrs. Andros & Hengstler, San Francisco, California.

PROCEEDINGS.

1908.

December 28. Filed verified libel for damage to cargo.

Issued monition for attachment of the French Barque, "Duc d'Aumale," etc., which said monition was afterwards, on the January 5th, 1909, returned and filed with return of United States Marshal endorsed thereon, as follows:

"In obedience to the within Monition, I attached the French Bark 'Duc d'Aumale' therein described, on the 28 day of December, 1908, and have given due notice to all persons claiming the same that this Court will, on the 12th day of January, 1909 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and con-

demnation thereof, should no claim be interposed for the same.

C. T. ELLIOTT,

United States Marshal.

By Geo. H. Burnham,

Chief Office Deputy.

San Francisco, Cal. Dec. 28,
1908." [7]

1908.

December 28. Filed claim of Compagnie Maritime Francaise, a French corporation, to the French Bark, "Duc d'Aumale," etc.

Filed admiralty stipulation (bond) in the sum of \$25,000, for the release of said French bark with Fidelity and Deposit Company of Maryland, as surety.

1909.

June 1. Filed answer of Compagnie Maritime Francaise, a French corporation.

2. Filed deposition of George Ledru, taken on behalf of respondent, before Francis Krull, U. S. Commissioner.

1911.

February 16. Filed depositions of E. Deddes et al., taken on behalf of libelant, before Commissioner Charles Albert van Renterghem, at Rotterdam, Holland.

Filed depositions of E. Plisson et al., taken on behalf of respondent, before Ch. Ed. Simon, doyen, at Nantes, France.

August 14. The Court this day referred this matter to United States Commissioner Jas. P. Brown to take and report the testimony.

1912.

January 15. Filed depositions of Pierre Lalande et al., taken on behalf of respondent, before Jas. P. Brown, United States Commissioner. [8]

1912.

January 16. This cause this day came on for hearing, in the District Court of the United States, for the Northern District of California, at the courtroom thereof, at San Francisco, California, before the Honorable R. S. Bean, Judge, presiding in said Court, and after hearing duly had, was continued until January 17th, 1912, for further hearing.

17. This cause came on for further hearing. Hearing and argument were had, and it was ordered that the matter be continued until January 18th for further argument. The Court ordered that Mr. Hengstler be granted one week to determine whether he will make application

to introduce further evidence herein.

18. This cause this day came on for further argument, after which the matter was ordered submitted to the Court for decision. It was ordered that the cause entitled "Compagnie Maritime Francaise vs. The Cargo of the French Barque 'Duc d'Aumale,' No. 13,941," be consolidated with this cause, and that it stand submitted upon the evidence and arguments introduced and made in this case.

- February 2. This cause this day came on for further hearing, in pursuance to order of January 17th, and after hearing duly had, was resubmitted to the Court for decision. [9]

1912.

- April 15. Filed opinion (Hon. R. S. Bean, Judge, Presiding), in which it was held that Meyer, Wilson & Co., were entitled to recover for damage to cargo, and referring the matter to U. S. Commissioner to ascertain and report the amount thereof.

1913.

- August 18. Filed interlocutory decree.

1916.

- March 23. Filed commissioner's report.

Filed one volume of testimony taken for commissioner.

- June 8. Filed exceptions to report of commissioner by Meyer, Wilson & Co., libelants.
- July 1. A hearing was this day had on the exceptions to the report of commissioner, and after argument was ordered submitted. The Hon. M. T. Dooling, Judge, presiding.

1917.

- January 29. The Court this day filed its order, overruling the exceptions to the commissioner's report, confirming said report, and ordering that a decree be entered in favor of libelants for the sum of \$2,242.72.
- February 8. Filed final decree.
- March 16. Filed notice of appeal.
Filed cost bond on appeal.
- April 6. Filed stipulation and order staying execution until this appeal is decided.
- May 9. Filed assignment of errors. [10]

(Title of Court and Cause.)

Libel for Freight Under Charter-party (13,941).

The libel of Compagnie Maritime Francaise, a French corporation, against the cargo of the French barque "Duc d'Aumale," laden on board of said vessel, and against all persons lawfully intervening

for their interest therein, in a cause of contract, civil and maritime, alleges:

FIRST.

That at all the times hereinafter mentioned libelant, Compagnie Maritime Francaise, was, and now is, a corporation organized and existing under the laws of the Republic of France, with its principal place of business at the city of Nantes, in said Republic, and was and is the owner of the French barque "Duc d'Aumale."

SECOND.

That on or about the 19th day of August, 1907, the said barque being then in the port of Rotterdam, Holland, the said libelant, as owner, made and concluded a charter-party with the firm of Wilson, Meyer & Co., charterers, by which said libelant, for and in consideration of the covenants and agreements therein mentioned, to be kept and performed by charterers, did covenant and agree on the freighting and chartering of the said barque unto said charterers, for a voyage from the port of Rotterdam to the port of San Francisco, in this District, on the terms in said charter-party mentioned. That a copy of said charter-party is hereunto annexed, marked Exhibit "A," and made a part hereof.

THIRD.

That, among other things, it was by said charter-party covenanted and agreed that the said charterers, for and in consideration [11] of the covenants and agreements to be kept and performed by said libelant, chartered and hired said barque on the terms following, therein mentioned, to wit:

- 1st. That the cargo was to consist of about 600 tons pig iron, balance coke (only one quality of coke to be shipped.)
- 2d. That libelant be paid Freight at the rate of twenty-two (22) shillings six (6) pence on pig iron, and at the rate of twenty-nine (29) shillings on coke, British sterling, per ton (of 20 cwt.) delivered, at the exchange of \$4.80 per pound sterling in full, to be paid in United States gold coin, on right and true delivery of the cargo.
- 3rd That charterers' liability should cease on completion of loading, and that libelant should have a lien on the cargo for all freight under said charter-party.

FOURTH.

That thereafter, at said port of Rotterdam, the said barque being then and there tight, staunch and strong, and every way fitted for the agreed voyage, said charterers shipped, and libelants received, on board of said barque a cargo of pig iron and coke, consisting of about 660 tons of pig iron, the balance being coke amounting to a number of tons in excess of 2,000 tons. That the master of said barque issued bills of lading for said cargo, wherein charterers or order were and are mentioned as consignees at the port of discharge. That thereafter the said barque set sail and proceeded to the port of San Francisco, where she arrived, with said cargo on board, on or about the 19th day of November, 1908, and was directed by charterers, as consignees, to a wharf within the Golden Gate for discharge. [12]

FIFTH.

That at all times since the making of said charter-party, libelant has well and truly performed all and singular the covenants and undertakings under said charter-party on its part to be performed.

SIXTH.

That on the discharge of said cargo, the sum of twenty-two shillings and six pence (22s. 6) became and was due and payable by charterers to libelants for each and every ton of pig iron discharged and delivered, and the sum of twenty-nine shillings (29s) for each and every ton of coke discharged and delivered, at the exchange of \$4.80 per pound sterling in full, to be paid in United States gold coin, in accordance with the terms of said charter-party. That libelant is ready and willing to deliver to charterers or order the said cargo, and the whole thereof, upon receipt of the freight agreed upon under the charter-party, but that charterers, although requested thereto, have refused to pay the sums mentioned respectively per ton of cargo delivered, and have notified libelants of their refusal to pay the sums claimed by libelant to become and be due as above mentioned under said charter-party, and have not paid to libelant the said sum or sums or any part thereof.

SEVENTH.

That libelant has been damaged by said neglect and refusal of said charterers and consignees of said cargo in a sum, the exact amount whereof cannot be determined at the present time nor until the completion of the discharge of said cargo, but which

will amount approximately to the sum of twenty thousand dollars (\$20,000).

EIGHTH.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this [13] Honorable Court, and that the said cargo above mentioned is now in the port of San Francisco and within said District.

WHEREFORE libelant prays that process of attachment in due form of law, according to the course of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue against the said cargo of the French barque "Duc d'Aumale," and that all persons having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid; and that this Honorable Court will pronounce for the freight as aforesaid, with interest and costs; and that said cargo may be condemned and sold to pay the same; and that the Court will grant to libelant such other and further relief as in law and justice it may be entitled to receive.

COMPAGNIE MME. FRANCAISE,

By P. LALANDE,

Master of the French Barque "Duc d'Aumale" and Agent for Libelant.

ANDROS & HENGSTLER,

Proctors for Libelant.

(Duly verified.) [14]

[Endorsed]: Filed, Nov. 30, 1908. Jas. P. Brown,
Clerk. By John Fouga, Deputy Clerk. [15]

(Title of Court and Cause.)

Libel (13,959).

To the Hon. JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The libel of Hermann L. E. Meyer, George H. C. Meyer, Hermann L. E. Meyer, Jr., J. W. Wilson and John W. Quaile, partners under the style of Meyer, Wilson & Co., doing business at the port of San Francisco, in the State of California, against the French bark "Duc d'Aumale," her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges:

I.

That at all of the times hereinafter referred to the libellants were and now are partners doing business at the port of San Francisco under the style of Meyer, Wilson & Co.

II.

That during the month of September, 1907, at the port of Rotterdam, in Holland, Wilson, Meyer & Co., merchants of Liverpool, shipped in good order and condition on board of the French sailing ship "Duc d'Aumale" about two million and fifteen thousand kilos (nineteen hundred and eighty-three tons) of coke, to be delivered in like good order and condition at San Francisco, California, unto order, the Act of God, perils of the sea and other usual perils excepted, on being paid freight according to the terms of a certain charter between said Wilson,

Meyer & Co. and the owners of said ship, to wit, twenty-nine shillings per ton, and the master of said ship [16] thereupon delivered to the said Wilson, Meyer & Co., a bill of lading for said goods, a copy whereof is hereunto annexed, marked "A" and is hereby referred to and made part hereof.

III.

That the said Wilson, Meyer & Co. thereafter endorsed and delivered to the libellants the bill of lading aforesaid, and that the libellants thereupon became entitled to receive the said merchandise from said ship in accordance with the said contract of affreightment.

IV.

That said ship sailed from said port of Rotterdam on or about September 19th, 1907, laden in part with said merchandise and thereafter, to wit, on or about the nineteenth day of November, 1908, arrived at the port of San Francisco and there delivered to the libellants the said merchandise, but these libellants aver that notwithstanding they were at all times ready and willing to pay the freight thereon as provided in said bill of lading, the same was not delivered to them in as good order and condition as when received, but, on the contrary, was injured and damaged by salt water to the extent that said merchandise on the delivery thereof was not worth in the market anything whatever after deduction of freight and duties.

V.

That the damage and injury aforesaid to the said merchandise was not caused by the Act of God or

any peril of the sea or other peril excepted in and by the said bill of lading, but solely by the negligence of the owners and master of the said ship in this, that the said ship at the time of sailing from said Rotterdam was in an unseaworthy condition [17] as to the hull thereof and was improperly stowed, so that leaks sprung in said ship and compelled the master to deviate from his voyage and seek a port of refuge and to run the said ship ashore at a point in the Falkland Islands. That long delays were incurred in attempting to float and repair said vessel, requiring the discharge of her cargo, which discharge involved great damage thereto and that the submersion thereof, as well in the ship while seeking a port of refuge, as thereafter while she was stranded, saturated the said cargo with salt water and further injured the same so that the same became and was of little value. That instead of being delivered to the libellants at the time at which said voyage would ordinarily have been ended, to wit, about the month of March 1908, provided the ship had been seaworthy on sailing, the said cargo was not delivered until the month of December, 1908.

VI.

That by reason of the negligence of the said owners and said master, and the injury to said merchandise, the libellants have been damaged in the sum of Seventeen Thousand Five Hundred (17,500) Dollars. That the owners of said ship have refused and do refuse to pay to the libellants the damages aforesaid.

VII.

That said ship is now in the port of San Francisco and within the jurisdiction of this Honorable Court.

VIII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court. [18]

And for a second and additional cause of action the libellants aver:

I.

That at all of the times hereinafter referred to the libellants were and now are partners doing business at the port of San Francisco under the style of Meyer, Wilson & Co.

II.

That during the month of September, 1907, at the port of Rotterdam, in Holland, Wilson, Meyer & Co., merchants of Liverpool, shipped in good order and condition on board of the French sailing ship "Duc d'Aumale" about four hundred (400) tons of silicious pig iron, to be delivered in like good order and conditions at San Francisco, California, unto order, the Act of God, perils of the sea and other usual perils excepted, on being paid freight according to the terms of a certain charter between said Wilson, Meyer & Co., and the owners of said ship, to wit, twenty-two shillings and six pence per ton, and the master of said ship thereupon delivered to the said Wilson, Meyer & Co., a bill of lading for said goods, a copy whereof is hereunto annexed, marked "B" and is hereby referred to and made part hereof.

III.

That the said Wilson, Meyer & Co., thereafter endorsed and delivered to the libellants the bill of lading aforesaid and that the libellants thereupon became entitled to receive the said merchandise from said ship in accordance with the said contract of affreightment.

IV.

That said ship sailed from said port of Rotterdam on or about the 19th day of September, 1907, bound to San Francisco [19] aforesaid, and laden in part with said merchandise and thereafter, to wit, on or about the 19th day of November, 1908, arrived at said port. That by reason of the insufficiency, unseaworthiness and improper stowage of said ship at the time of sailing on said voyage, said ship soon thereafter sprung a leak which at a later period of the voyage compelled the master to seek the Falkland Islands as a port of refuge, where the said vessel was beached and subsequently taken off and taken to Montevideo and thence to Buenos Ayres where she was repaired. That by reason of the delay thus incurred through the negligence of the owners of said ship, her arrival at San Francisco was delayed for a period of not less than eight months by reason whereof the libellants lost the opportunity to sell one hundred (100) tons of the said merchandise at the then prevailing price, which was in excess of the price ruling therefor in the market of San Francisco at the date of their arrival, to the damage of the libellants in the sum of One Thousand and Seventeen (1,017) Dollars.

V.

That the said owners of said ship have refused and do now refuse to pay to the libellants any part of said damage.

VI.

That said ship is now in the port of San Francisco and within the jurisdiction of this Honorable Court.

VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

And for a third and separate cause of action the libellants aver: [20]

I.

That at all of the times hereinafter referred to the libellants were and now are partners doing business at the port of San Francisco under the style of Meyer, Wilson & Co.

II.

That during the month of September, 1907, at the port of Rotterdam, in Holland, Wilson, Meyer & Co., merchants of Liverpool, shipped in good order and condition on board of the French sailing ship "Duc d'Aumale" about two hundred and sixty (260) tons of pig iron, to be delivered in like good order and condition at San Francisco, California, unto order, the Act of God, perils of the sea and other usual perils excepted, on being paid freight according to the terms of a certain charter between said Wilson, Meyer & Co., and the owners of said ship, to wit, twenty-two shillings and six pence per ton, and the

master of said ship thereon delivered to the said Wilson, Meyer & Co., a bill of lading for said goods, a copy whereof is hereunto annexed, marked "C," and is hereby referred to and made part hereof.

III.

That the said Wilson, Meyer & Co., thereafter endorsed and delivered to the libellants the bill of lading aforesaid and that the libellants thereupon became entitled to receive the said merchandise from said ship in accordance with the said contract of afreightment.

IV.

That said ship sailed from said port of Rotterdam on or about the 19th day of September, 1907, bound to San Francisco aforesaid, and laden in part with said merchandise, and thereafter, to wit, on or about the 19th day of November, 1908, arrived at said port. That by reason of the insufficiency, [21] unseaworthiness and improper stowage of said ship at the time of sailing on said voyage, said ship soon thereafter sprung a leak which at a later period of the voyage compelled the master to seek the Falkland Islands as a port of refuge where the said vessel was beached and subsequently taken off and taken to Montevideo and thence to Buenos Ayres where she was repaired. That by reason of the delay thus incurred through the negligence of the owners of said ship, her arrival at San Francisco was delayed for a period of not less than eight months by reason whereof the libellants lost the opportunity to sell one hundred and sixty (160) tons of the said merchandise at the then prevailing price, which was in

excess of the price ruling therefor in the market of San Francisco at the date of their arrival, to the damage of the libellants in the sum of One Thousand Two Hundred and Eighty-eight and 73/100 (1,288.-73) Dollars.

V.

That the said owners of said ship have refused and do now refuse to pay to the libellants any part of said damage.

VI.

That said ship is now in the port of San Francisco and within the jurisdiction of this Honorable Court.

VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

And for a fourth and separate cause of action the libellants aver:

I.

That at all the times hereinafter averred they were and now are partners doing business at San Francisco, California, under the style of Meyer, Wilson & Co. [22]

II.

That during the month of September, 1907, Wilson, Meyer & Co., of Liverpool, shipped on board of said bark "Duc d'Aumale," at Rotterdam, in Holland, in good order and condition certain merchandise, to wit, coke, in the amount described in the bill of lading hereunto annexed, marked "A," and iron described in Exhibits "B" and "C" hereto annexed, reference to which is hereby made, to be by said ship

carried to San Francisco, California, and there delivered unto order in like good order and condition, the Act of God and other perils excepted as set forth in said bill of lading, on payment of freight at the rate of twenty-nine shillings per ton for the coke, and twenty-two shillings and six pence per ton for the iron.

III.

That thereafter Wilson, Meyer & Co. endorsed and delivered the said bill of lading to the libellants who now hold the same.

IV.

That after the sailing of said ship from Rotterdam aforesaid on the said voyage, she sprang a leak, so that the master thereof was compelled to seek the Falkland Islands as a refuge and there to beach his said vessel. That the said ship was thereafter floated and taken first to Montevideo and thence to Buenos Ayres where the said coke and iron were discharged, warehoused and afterwards restowed on board of said vessel. That by reason of the submersion of said coke in the hold of the said vessel during the voyage entered upon to said port of refuge and during several weeks while she lay on the beach of the Falkland Islands, the said coke was saturated with salt water to such an extent that it became of less value [23] than the cost of further transportation to San Francisco and that it became the duty of the master, acting on behalf of the libellants, who were not present or represented at said Montevideo or Buenos Ayres, to prevent the accumulation of useless charges thereon and to cause the same to be sold, but the said master,

in violation of his said duty, nevertheless proceeded to restow the said coke at great expense, said expense being enhanced by the largely increased weight thereof due to its absorption of water, while such value as said coke might have was diminished by the additional handling thereof in the restowage thereof.

That libellants are not able to state what costs were made chargeable upon the said coke by the discharging and restowing thereof and by warehousing the same, but they aver that such charges added to the cost of freight thereon, made the said coke valueless to them at the port of destination and that it was worth less than the duties and freight. That large cost was also incurred in the handling and restowage of the iron hereinbefore referred to.

That in addition to the said charges hereinabove referred to, salvage charges were incurred in the salvage of ship and cargo which, as libellants are informed, will be sought to be enforced against libellants as consignees of said coke and iron. That delivery thereof was made at San Francisco only on condition that the libellants would, and they did, sign a general average bond whereby they agreed to pay all general average charges that might be found to be lawfully due by them on said cargo. That they are ignorant what said charges are or in what amount it may be claimed that they are liable in general average, but on their information and belief they aver that the said amount will not be less than [24] six thousand dollars. They further aver that all of said charges, if the same shall be imposed upon them, will be a loss due entirely to the neglect of the master of

said ship to properly care for the said cargo and by reason of the fact that the said ship was unseaworthy in her hull and improperly stowed at the time of departure from Rotterdam on her said voyage to San Francisco.

And the libellants further aver that said ship is now in the port of San Francisco, and that she is about to proceed on a voyage to a European port and that her owners are resident in France and that, if it be found that the libellants are liable for the charges, they will be required to pay the same, to their damage in the said sum of *Six* dollars or thereabouts.

V.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE the libellants pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said bark, her tackle, apparel and furniture, and that all persons having any interest therein may be cited to appear and answer on oath all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the damages aforesaid with interest and that the said vessel be condemned and sold to pay the same, and that the libellants may have such other and further relief as in law and justice

they may be entitled to receive.

GEO. H. E. MEYER,

H. L. E. MEYER,

H. L. E. MEYER, Jr.,

J. W. WILSON,

JOHN M. QUAILE,

By GEO. H. C. MEYER,

Their Attorney in Fact. [25]

PAGE, McCUTCHEON & KNIGHT,

Proctors for Libellants.

(Duly verified.) [26]

COPY.

MARKS AND/OR NUMBERS.

“A”

Freight and all conditions as per charter-party dated
19/20th August, 1907.

For immediate export, wholly or partly.

No. 3.

SHIPPED, in good order and condition, by WILSON, MEYER & CO., of Liverpool, in and upon the good Ship or Vessel, called the “DUC D'AUMALE” whereof Lalande is Master for the present Voyage, and now lying in the port of Rotterdam, and bound for San Francisco, Cala.

Weight,
Kilos

A quantity of coke said to be two million &

fifteen thousand kilos.....2015.000
being marked and numbered as per margin, and are to be delivered in the like good order and condition at the aforesaid port of discharge, unto Order or to its, his or their Assigns. Freight for the said Goods to

be paid at aforesaid port of discharge, as per margin, in United States Gold Coin, at the rate of 4 dollars 80 cents per Pound Sterling. Average (if any) payable according to York-Antwerp Rules, 1890, and to be adjusted and settled in San Francisco.

(The Act of God, Perils of the Sea, Fire, Barratry of the Master and Crew, Enemies, Pirates, Thieves (but not pilferage), [27] arrest and restraint of Princes, Rulers and People, Collisions, Stranding and other accidents of navigation excepted, even when occasioned by the negligence, default, or error in judgment, of the Pilot, Master, Mariners, or other servants of the Shipowner, and with liberty to sail with or without Pilots, and to tow and assist Vessels in all situations.)

Weight and contents unknown, Ship not accountable for leakage, breakage, or rust, unless occasioned by improper stowage.

IN WITNESS whereof the Master, Owner(s), or Agent(s) of the said Ship or Vessel has signed two Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Rotterdam, this 17th day of Septr., 1907.

C. G.,
Master. [28]

COPY.

MARKS AND/OR NUMBERS.

4/5% Lackenby

“B”

Separately stowed from any other Iron on board, and to be delivered accordingly.

Freight and all conditions as per charter-party dated
19/20th August, 1907.

For immediate export, wholly or partly.

B

No. 2

SHIPPED, in good order and condition, by WILSON, MEYER & CO., of Liverpool, in and upon the good Ship or Vessel, called the "DUC D'AUMALE" whereof —— is Master for the present Voyage, and now lying in the port of Rotterdam, and bound for San Francisco, Cala.

Weight.

Tons

A quantity of silicious pig iron said to be

four hundred tons.....400

being marked and numbered as per margin, and are to be delivered in the like good order and condition at the aforesaid port of discharge, unto Order or to its, his or their Assigns. Freight for the said Goods to be paid at aforesaid port of discharge, as per margin, in United States Gold Coin, at the rate of 4 dollars 80 cents per Pound Sterling. Average (if any) payable according to York-Antwerp Rules, 1890, and to be adjusted and settled in San Francisco.

(The Act of God, Perils of the Sea, Fire, Barratry of the Master and Crew, Enemies, Pirates, Thieves (but not pilferage), [29] arrest and restraint of Princes, Rulers and People, Collisions, Stranding and other accidents of navigation excepted, even when occasioned by the negligence, default, or error in judgment, of the Pilot, Master, Mariners, or other servants of the Shipowner, and with liberty to sail

with or without Pilots, and to tow and assist Vessels in all situations.)

Weight and contents unknown, Ship not accountable for leakage, breakage, or rust, unless occasioned by improper stowage.

IN WITNESS whereof the Master, Owner(s), or Agent(s) of the said Ship or Vessel has signed two Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Rotterdam, this 5th day of Septr., 1907.

C. G.,
Master. [30]

COPY.

MARKS AND/OR NUMBERS.

“C” No. I Clarence

Separately stowed from any other Iron on board, and to be delivered accordingly.

Freight and all conditions as per charter-party dated
19/20th August, 1907.

For immediate export, wholly or partly.

No. 1

SHIPPED, in good order and condition, by WILSON, MEYER & CO., of Liverpool, in and upon the good Ship or Vessel, called the “DUC D'AUMALE” whereof —— is Master for the present Voyage, and now lying in the port of Rotterdam, and bound for San Francisco, Cala.

Weight.
Tons

A quantity of pig iron said to be two hundred	
& sixty tons.....	260
being marked and numbered as per margin, and are	

to be delivered in the like good order and condition at the aforesaid port of discharge, unto Order or to its, his or their Assigns. Freight for the said Goods to be paid at aforesaid port of discharge, as per margin, in United States Gold Coin, at the rate of 4 dollars 80 cents per Pound Sterling. Average (if any) payable according to York-Antwerp Rules, 1890, and to be adjusted and settled in San Francisco.

(The Act of God, Perils of the Sea, Fire, Barratry of the Master and Crew, Enemies, Pirates, Thieves (but not pilferage), [31] arrest and restraint of Princes, Rulers and People, Collisions, Stranding and other accidents of navigation excepted, even when occasioned by the negligence, default, or error in judgment, of the Pilot, Master, Mariners, or other servants of the Shipowner, and with liberty to sail with or without Pilots, and to tow and assist Vessels in all situations.)

Weight and contents unknown, Ship not accountable for leakage, breakage, or rust, unless occasioned by improper stowage.

IN WITNESS whereof the Master, Owner(s), or Agent(s) of the said Ship or Vessel has signed two Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Rotterdam, this 5th day of Septr., 1907.

C. G.,
Master.

[Endorsed]: Filed Dec. 28, 1908. Jas. P. Brown,
Clerk. By John Fouga, Deputy Clerk. [32]

(Title of Court and Cause, and Number.)

Claim of Hermann L. E. Meyer et al. (13,941).

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The claim of Hermann L. E. Meyer, George H. C. Meyer, H. L. E. Meyer, Jr., J. W. Wilson and — Quaile, partners under the name of Meyer, Wilson & Co., to the cargo of the French ship "Duc d'Aumale," now in the custody of the Marshal of the United States for the said Northern District of California, at the suit of Compagnie Maritime Francaise alleges:

That they are the true and *bona fide* owners of the said cargo, and that no other person is owner thereof.

WHEREFORE, the claimants pray that this Honorable Court will be pleased to decree a restitution of the same to them and otherwise right and justice to administer in the premises.

HERMAN L. E. MEYER,
GEO. H. C. MEYER,
H. L. E. MEYER, Jr.,
J. W. WILSON,
— QUAILE,

By Their Atty. in Fact.
HERMAN L. E. MEYER,
PAGE, McCUTCHEON & KNIGHT,
Proctors for Claimant.

(Duly verified.)

[Endorsed]: Filed Nov. 30, 1908. Jas. P. Brown,
Clerk. By John Fouga, Deputy Clerk. [33]

(Title of Court and Cause.)

Claim (13,959).

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The claim of Compagnie Maritime Francaise, a corporation, organized under the laws of France, to the French Bark "Duc d'Aumale," her tackle, apparel and furniture, now in the custody of the Marshal of the United States for the said Northern District of California, at the suit of Hermann L. E. Meyer et al., alleges:

That said claimant is the true and *bona fide* owner of the said bark "Duc d'Aumale," her tackle, apparel and furniture, and that no other person is owner thereof.

WHEREFORE, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same to said claimant and otherwise right and justice to administer in the premises.

P. LALANDE.

P. Lalande, deposes and says that he was and is the master of said vessel, and that at the time of the said arrest thereof, he was in possession of the same as the lawful bailie thereof for the said owner, and that said owner resides out of the said Northern District of California, and more than one hundred miles from the city of San Francisco, in said District.

ANDROS & HENGSTLER,
Proctors for Claimant.

(Duly verified.)

[Endorsed]: Filed Dec. 28, 1908. Jas. P. Brown,
Clerk. By John Fouga, Deputy Clerk. [34]

(Title of Court and Cause, and Number.)
(13,941.)

Answer.

To the Honorable JOHN J. DE HAVEN, Judge of
the District Court of the United States, for the
Northern District of California:

The answer of Hermann L. E. Meyer, George
H. C. Meyer, Hermann L. E. Meyer, Jr., J. W. Wil-
son and John M. Quaile, copartners doing business
under the style of Meyer, Wilson & Co., claimants of
the cargo of the French barque "Duc d'Aumale," to
the libel of Compagnie Maritime Francaise, a corpo-
ration, filed herein, alleges as follows:

FIRST.

That as to the allegations contained in article the
first of said libel, these claimants have no informa-
tion or belief upon the subject thereof, whereby they
call for proof thereof.

SECOND.

Claimants admit the allegations of article the
second of said libel.

THIRD.

Answering unto the third article in said libel, said
claimants aver that there were no other agreements
concerning the chartering of said vessel than are
contained in the written charter-party, a copy
whereof is annexed to the libel herein.

FOURTH.

Answering unto the fourth article in said libel set

forth, said claimants deny that at the time the charterers [35] shipped at the port of Rotterdam, and the master and said Compagnie Maritime Francaise there received on board the said barque the cargo referred to in said article, the said barque was tight, staunch and strong, or tight, staunch or strong, or in every or any way fitted for the voyage of said barque from the port of Rotterdam to the port of San Francisco, and in this behalf said claimants aver that at said time, and at the time of said barque sailing from Rotterdam, her hull was in an unseaworthy condition and the said cargo on board said barque was improperly stowed. Claimants deny that two thousand (2,000) tons or any number of tons in excess of two thousand (2,000) constituted the quantity of coke so shipped on board said barque, and in this behalf claimants aver that the amount so shipped did not exceed in quantity one thousand nine hundred and eighty-three (1,983) tons. Claimants deny that upon the arrival of said barque at the port of San Francisco she was directed by charterers, as consignees, to a wharf within the Golden Gate for discharge.

FIFTH.

Claimants deny that at all or any of the times since the making of said charter-party, or at any other time, libellant, has well and truly, or well or truly performed all and singular or all or singular the covenants and undertakings in said charter-party on its part to be performed, and in this behalf claimants aver that the bills of lading issued by said master of said barque provided that said cargo should be de-

livered in the like good order and condition in which said cargo was shipped, and that said cargo was in fact shipped in good order and condition on or about the 19th day of September, 1907; that said barque arrived at the port of San Francisco on [36] or about the 19th day of November, 1908, and claimants aver that they were at all times ready and willing to pay the freight thereon as provided in said bills of lading and by said charter-party, but that as to the coke cargo, transported by said barque, said cargo was not delivered to claimants in as good order and condition as when received by said barque, but, on the contrary, was injured and damaged by salt water to the extent that said merchandise on delivery thereof was not worth in the market anything whatever after deduction of freight and duties, and in this behalf claimants further aver that the damage and injury aforesaid to the said cargo was not caused by the act of God or any peril of the sea or other peril excepted in and by said bills of lading or the said charter-party, but solely by the negligence of the owners and master of the said ship in this, that the said ship at the time of sailing from said Rotterdam was in an unseaworthy condition as to the hull thereof, and was improperly stowed, all in violation of the terms of said bills of lading and of said charter-party, so that leaks sprang in said ship and compelled the *maters* to deviate from his voyage and seek a port of refuge and to run said ship ashore at a point in the Falkland Islands where the said vessel was beached and subsequently taken off and taken to Montevideo and thence to Buenos Ayres, where

she was repaired. That long delays were incurred in attempting to float and repair said barque, requiring the discharge of her cargo, which discharge involved great damage thereto and that the submersion thereof, as well in the ship while seeking a port of refuge as thereafter while she was stranded, saturated the said cargo with salt water and further injured the same so that the same [37] became and was of little value and worth less than the freight and duties thereon. That instead of being delivered to claimants at the time at which the said voyage would ordinarily have ended, to wit, about the month of March, 1908, provided said barque had been seaworthy on sailing, the said cargo was not delivered until the month of December, 1908. Further answering, the said claimants aver that the said barque failed, neglected and refused to deliver said one thousand nine hundred and eighty-three (1,983) tons of coke, but only delivered one thousand eight hundred and sixty-four (1,864) tons—206/2240 tons thereof.

That by reason of the negligence of the said owners and the said master of said bark and the injury to said merchandise, claimants have been damaged in the sum of seventeen thousand (17,000) dollars.

SIXTH.

That as to the pig iron, alleged to consist of about six hundred and sixty (660) tons thereof, shipped on board said barque, about four hundred (400) tons thereof was silicious pig iron, and that by reason of the matters hereinbefore set forth, and the negligence of the owners of said ship, the arrival of said barque at San Francisco was wrongfully delayed for

a period of not less than eighty (8) months, and by reason thereof, claimants lost the opportunity to sell one hundred (100) tons of the said merchandise at the then prevailing price, which was in excess of the price ruling therefor in the market of San Francisco at the date of their arrival, whereby claimants were damaged in the sum of one [38] thousand and seventeen (1,017) dollars. That the balance of said pig iron consisted of about two hundred and sixty (260) tons thereof, and that by reason of the matters hereinbefore set forth and the negligence of the owners of said barque, the arrival of said barque at San Francisco was wrongfully delayed for a period of not less than eight (8) months, and by reason thereof claimants lost the opportunity of selling one hundred and sixty (160) tons of the said merchandise at the then prevailing price, which was in excess of the price ruling therefor in the market of San Francisco at the date of their arrival, to the damage of claimants in the sum of one thousand two hundred and eighty-eight and 73/100 (1,288.73) dollars.

That the owners of said barque have failed, neglected and refused to pay any of the damages hereinbefore alleged to have been suffered by claimants, and that no part thereof has been paid.

SEVENTH.

Further answering unto the libel herein, these claimants aver that after the sailing of said ship from Rotterdam aforesaid on the said voyage, she sprang a leak, so that the master thereof was compelled to seek the Falkland Islands as a refuge and there to beach his said vessel. That the said ship

was thereafter floated and taken first to Montevideo and thence to Buenos Ayres where the said coke and iron were discharged, warehoused and afterwards restowed on board of said vessel. That by reason of the submersion of said coke in the hold of the said vessel during the voyage entered upon to said port of refuge and during several weeks while she lay on the beach at the Falkland Islands, the said coke was saturated with salt water to such an extent that it became of less value [39] than the cost of further transportation to San Francisco and that it became the duty of the master, acting on behalf of these claimants, who were not present or represented at said Montevideo or Buenos Ayres, to prevent the accumulation of useless charges thereon and to cause the same to be sold, but the said master, in violation of his said duty, nevertheless proceeded to restow the said coke at great expense, said expense being enhanced by the largely increased weight thereof due to its absorption of water, while such value as said coke might have was diminished by the additional handling thereof in the restowage thereof.

That claimants are not able to state what costs were made chargeable upon the said coke by the discharging and restowing thereof and by warehousing the same, but they aver that such charges added to the cost of freight thereon, made the said coke valueless to them at the port of destination and that it was worth less than the duties and freight. That large cost was also incurred in the handling and restowage of the iron hereinbefore referred to.

That in addition to the said charges hereinabove referred to, salvage charges were incurred in the

salvage of ship and cargo which, as claimants are informed, will be sought to be enforced against claimants as consignees of said coke and iron. That delivery thereof was made at San Francisco only on condition that the claimants would, and they did, sign a general average bond whereby they agreed to pay all general average charges that might be found to be lawfully due by them on said cargo. That they are ignorant what said charges are or in what amount it may be claimed that they are liable in general average, but on their information and [40] belief they aver that the said amount will not be less than six thousand (6,000) dollars. They further aver that all of said charges, if the same shall be imposed upon them, will be a loss due entirely to the neglect of the master of said ship to properly care for the said cargo and by reason of the fact that the said ship was unseaworthy in her hull and improperly stowed at the time of departure from Rotterdam on her said voyage to San Francisco.

EIGHTH.

These claimants deny that libellant has been damaged by the neglect and refusal or neglect or refusal of claimants to pay the said freight specified in said libel, or any part thereof, and deny that the said freight that might be due, were it not for the damages hereinbefore specified as having been suffered by claimants, would exceed the sum of sixteen thousand five hundred and sixty and 64/100 (16,560.64) dollars, and these claimants aver that their damage, as hereinbefore set forth, far exceeds said sum last mentioned, and that of said sum last mentioned, one

thousand one hundred and seventy-three and 75/100 (1,173.75) dollars has been paid to or for the account of libellant.

Answering unto article eighth of said libel, these claimants deny that all and singular the premises contained in said libel are true, save as the allegations of said libel may have been admitted by this answer.

WHEREFORE claimants pray that the libel herein filed may be dismissed and that claimants recover their costs and charges herein incurred, and for such other relief as may be just.

PAGE, McCUTCHEON & KNIGHT,
Proctors for Claimants.

(Duly verified.)

[Endorsed]: Filed Jul. 6, 1909. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [41]

(Title of Court, Cause and Number.)

(13,959.)

Answer of Claimant.

To the Honorable JOHN J. DE HAVEN, Judge of
the District Court of the United States for the
Northern District of California:

The answer of Compagnie Maritime Francaise,
claimant of said French bark "Duc d'Aumale," to the
libel of Hermann L. E. Meyer, et al., on file herein,
alleges as follows:

ANSWER TO THE FIRST ALLEGED CAUSE
OF ACTION.

I.

Claimant admits the allegations of Article I of said libel.

II.

Claimant admits the allegations of Article II of said libel, except the parenthetical allegation in line 23, page 1 of said libel, reading as follows: “(nineteen hundred and eighty-three tons).” As to said allegation, claimant denies the same.

III.

Claimant admits the allegations of Article III of said libel.

IV.

Claimant denies that libelants were at all times or at any time ready or willing to pay the freight on the merchandise in said article mentioned as provided in the bill of lading therein mentioned, or at all. Claimants denies that said merchandise was injured or damaged by salt water or in any other way to the extent that said merchandise, on delivery thereof, was not worth in the market anything whatever after deduction of freight and duties or freight or duties; denies that said merchandise was injured or damaged to the extent that its market value was injured or affected; and denies that its value in the market was impaired or affected by the alleged injury or damage by salt water, in said article mentioned, or by any alleged injury or damage by salt water or otherwise. [42]

V.

Claimant denies that said alleged damage or injury to said merchandise was not caused by the act of God or by peril of the sea or by other peril excepted in the bill of lading mentioned, and claimant denies that said alleged damage or injury was caused solely or at all by the negligence of the owners or master of the said ship in the respect alleged in said article, or in any other respect, or at all. Claimant denies that said ship was in an unseaworthy condition at the time of sailing from Rotterdam as to the hull thereof or was unseaworthy in any other respect; and denies that said ship was improperly stowed at the time of sailing from Rotterdam. Claimant denies that leaks or any leak sprung in said ship by reason of the negligence of the owners or master of said ship, or by reason of any unseaworthy condition thereof at the time of sailing from Rotterdam, or by reason of any improper stowage, or by reason of any act or default of said owners or master of said ship; and in this behalf claimant alleges that the leak sprung in said ship, in article V mentioned, was caused by the act of God or perils of the sea. Claimant denies that the discharge of the cargo of said ship, in article V mentioned, involved great or any damage to said cargo. Claimant denies that the submersion of said ship or cargo, in article V mentioned, saturated said cargo with salt water to such an extent that the same became or was of little value or less value than otherwise it would have been; and claimant denies that said discharge or said submersion injured said cargo in any respect.

Claimant alleges that said ship was seaworthy on sailing.

VI.

Claimant denies that the libelants have been damaged in the sum of Seventeen Thousand Five Hundred Dollars (\$17,500), or in any other sum, by reason of any negligence of the said owners or said master, or by reason of the alleged or any injury to said merchandise, or [43] by reason of anything done or omitted by said owners or said master or by this claimant.

VII.

Claimant denies that all or singular or any of the premises in article VIII referred to are true, except as in this answer admitted.

And for a further and distinct answer to the alleged first cause of action in said libel stated claimant alleges that claimant did exercise due diligence and did properly equip, man, provision and outfit said vessel, and did make the said vessel in all respects seaworthy and capable of performing her intended voyage; and that the master, officers, agents and servants of claimant did carefully handle and stow the cargo of libelants, and did reasonably care for the same during the voyage, and did properly deliver the same; and that the springing of the leak, in article V on page 3 of said libel alleged, and any and all damage, injury or loss that may have happened in consequence thereof, was caused by and resulted from the act of God and perils of the sea.

And for a further and distinct answer to the alleged first cause of action in said libel stated claim-

ant alleges that claimant did exercise due diligence and did properly equip, man, provision and outfit said vessel, and did make said vessel seaworthy and capable of performing her intended voyage; and that the master, officers, agents and servants of claimant did carefully handle and stow the cargo of libelants and did reasonably care for the same during the voyage, and did properly deliver the same; and that any damage, loss or injury that may have happened to the said cargo of libelants by reason of submersion, or delays or otherwise, as in the alleged first cause of action stated, were caused by and resulted from faults or errors in the navigation of or management [44] of said vessel; and that claimant is absolved from all and any liability for said loss, damage or injury by the provisions of the Act of Congress of February 13, 1893, c. 105, 27 Stat. 445.

ANSWER TO THE SECOND ALLEGED CAUSE OF ACTION.

Answering the allegations of the alleged second cause of action in said libel claimant alleges as follows:

I.

Claimant admits the allegations of Article II, on page 4 of said libel.

II.

Claimant admits the allegations of Article II, on page 4 of said libel.

III.

Claimant admits the allegations of Article III, on page 5 of said libel.

IV.

Claimant denies that said ship sprung a leak soon after the time of her sailing on her voyage or at any time, by reason of any insufficiency or unseaworthiness or improper stowage at the time of said sailing; denies that any insufficiency or unseaworthiness or improper stowage of said ship compelled the master at any time to seek the Falkland Islands as a port of refuge. Claimant denies that the arrival of said ship at San Francisco was delayed by reason of the delay or any delay incurred as in said article alleged, or by reason of any delay caused by any insufficiency, or unseaworthiness, or improper stowage of said ship at the time of her sailing on her voyage, or by reason of any negligence, or any other act or default, of the owners of said ship; and claimant denies that libelants lost the opportunity to sell one hundred (100) tons of said [45] merchandise, or any number of tons thereof, at the then prevailing or any price by reason of any delay incurred through any negligence of the owners of said ship or this claimant, or by reason of anything done or omitted by this claimant, or by reason of any insufficiency or unseaworthiness or improper stowage of said ship; and denies that libelants were damaged in the sum of One Thousand Seventeen Dollars (\$1,017), or any other sum whatever, by any act or default of said ship or this claimant.

V.

Claimant denies that all or singular the premises in Article VII, page 6 of said libel, referred to are true, except as in this answer admitted.

And for a further and distinct answer to the alleged second cause of action in said libel stated claimant alleges that claimant did exercise due diligence and did properly equip, provision, man, and outfit said vessel, and did make the said vessel in all respects seaworthy and capable of performing her intended voyage; and that the master, officers, agents and servants of claimant did carefully handle and stow the cargo of libelants, and did reasonably care for the same during the voyage, and did properly deliver the same; and that the springing of the leak, in Article IV on page 5 of said libel alleged, and any and all damage, injury or loss that may have happened in consequence thereof, was caused by and resulted from the Act of God and perils of the sea.

And for a further and distinct answer to the alleged second cause of action in said libel stated claimant alleges that claimant did exercise due diligence and did properly equip, man, provision and outfit said vessel, and did make said vessel seaworthy and [46] capable of performing her intended voyage; and that the master, officers, agents and servants of claimant did carefully handle and stow the cargo of libelants and did reasonably care for the same during the voyage, and did properly deliver the same; and that any damage, loss or injury that may have happened to the said cargo of libelants by reason of submersion or delays or otherwise, as in the alleged second cause of action stated, were caused by and resulted from faults or errors in the navigation of or management of said vessel; and that claimant is absolved from all and any liability for said

loss, damage or injury by the provisions of the Act of Congress of February 13, 1893, c. 105, 27 Stat. 445.

ANSWER TO THIRD ALLEGED CAUSE OF ACTION.

Answering the allegations of the alleged third cause of action in said libel, claimant alleges as follows:

I.

Claimant admits the allegations of Article I, on page 6 of said libel.

II.

Claimant admits the allegations of Article II, on page 6 of said libel.

III.

Claimant admits the allegations of Article III, on page 7 of said libel.

IV.

Claimant denies that said ship sprung a leak soon after the time of her sailing on said voyage or at any time by reason of the insufficiency, or unseaworthiness, or improper stowage thereof at the time of her sailing; and denies that any insufficiency or unseaworthiness or improper stowage of said ship existed at the time [47] of her sailing; denies that any insufficiency or unseaworthiness or improper stowage compelled the master to seek the Falkland Islands as a port of refuge. Claimant denies that the arrival of said ship at San Francisco was delayed by reason of the delay, or any delay incurred as in said article alleged, or by the negligence or any negligence, or any other act or default, of the owners of said ship, or by reason of any delay caused by any

insufficiency, or unseaworthiness, or improper stowage of said ship at the time of her said sailing on her voyage; and claimant denies that the libelants lost the opportunity to sell one hundred and sixty (160) tons of the said merchandise, or any number of tons thereof, at the then or at any time prevailing price, or any price, by reason of any delay incurred through any negligence of the owners of said ship, or by reason of anything done or omitted by the claimant, or by reason of any insufficiency or unseaworthiness or improper stowage of said ship; and denies that libelants were damaged in the sum of One Thousand Two Hundred and Eighty-eight 73/100 Dollars (\$1,288.73), or any other sum whatever, by any act or default of this claimant.

V.

Claimant denies that all and singular the premises in Article VII, on page 8 of said libel, referred to are true, except as in this answer admitted.

And for a further and distinct answer to the alleged third cause of action in said libel stated claimant alleges that claimant did exercise due diligence and did properly equip, man, provision and outfit said vessel, and did make the said vessel in all respects seaworthy and capable of performing her intended voyage; and that the master, officers, agents and servants of claimant did carefully handle and stow the cargo of libelants, and did reasonably care for the same during the voyage, and did properly deliver the same; and [48] that the springing of the leak, in Article IV on page 7 of said libel alleged, and any and all damage, injury or loss that may

have happened in consequence thereof, was caused by and resulted from the act of God and perils of the sea.

And for a further and distinct answer to the alleged third cause of action in said libel stated claimant alleges that claimant did exercise due diligence and did properly equip, man, provision and outfit said vessel, and did make said vessel seaworthy and capable of performing her intended voyage; and that the master, officers, agents and servants of claimant did carefully handle and stow the cargo of libelants and did reasonably care for the same during the voyage, and did properly deliver the same; and that any damage, loss or injury that may have happened to the said cargo of libelants by reason of submersion, or delays or otherwise, as in the alleged third cause of action stated, were caused by and resulted from faults or errors in the navigation of or management of said vessel; and that claimant is absolved from all and any liability for said loss, damage or injury by the provisions of the Act of Congress of February 13, 1893, c. 105, 27 Stat. 445.

ANSWER TO THE FOURTH CAUSE OF ACTION.

Answering the allegations of the alleged fourth cause of action in said libel, claimant alleges as follows:

I.

Claimant admits the allegations of Article I, on page 8 of said libel.

II.

Claimant admits the allegations of Article II, on page 8 of said libel. [49]

III.

Claimant admits the allegations of Article III, on pages 8 and 9 of said libel.

IV.

Claimant denies that, by reason of the submersion of the coke carried in the hold of said vessel, as in Article IV, on page 9 of said libel stated, the said coke was saturated with salt water to such an extent that it became of less value than the cost of further transportation to San Francisco; and on this behalf claimant alleges that it is ignorant of the extent to which said coke was then and there saturated and of the extent to which its value was thereby affected, and on that ground calls for proof of the allegations referring thereto in said article. Claimant denies that it became the duty of the master, acting on behalf of libelants, to cause the said coke to be sold, and on this behalf alleges that it was not reasonably possible to sell the said coke. As to the allegation that libelants were not present or represented at said Montevideo or Buenos Ayres, claimant is ignorant, and therefore calls for proof thereof. Claimant denies that the master acted in violation of his alleged or any duty in restowing the said coke. As to the extent, if any, to which the expense of restowing said coke was enhanced by the increased weight thereof; and the extent, if any, to which the value of said coke was diminished by the additional handling thereof, claimant is ignorant, and on that ground asks for proof of the allegations in said Article IV referring thereto. But claimant alleges that the master of said ship acted in the reasonable interest

of and in accordance with his duty to libelants and all concerned in restowing the said cargo and carrying it to destination; and denies that any expense or charges thereby incurred were caused by any act or default of claimant. Claimant [50] denies that the aggregate charges for discharging, restowing and warehousing said coke, added to the cost of freight thereon, made the said coke valueless to said libelants at the port of destination, and denies that said coke was worth less than the duties and freight. Claimant denies that the cost incurred in the handling or restowage of the iron in said article referred to was caused by any act or default of the master or this claimant.

As to the allegations of said Article IV, on page 10 of said libel, that the amount of the general average charges for which libelants may be or become liable will not be less than six thousand dollars (\$6,000), claimant is ignorant, and for that reason calls for proof thereof. Claimant denies that all, or any, of the general average charges that may be imposed upon libelants under their general average bond in said article mentioned, will be or are a loss due entirely or due partly or due at all to the neglect of the master of said ship to properly care for the said cargo or to any act or default of the master of this claimant in this regard; and claimant denies that all or any of said general average charges will be or are a loss due entirely or due partly or due at all to any unseaworthiness in the hull of said ship or to any improper stowage at the time of the departure from Rotterdam on the voyage to San Fran-

cisco, or to any act or default of this claimant in this regard. Claimant denies that libelants are damaged in the sum of six thousand dollars or any amount whatever in respect to anything in said article alleged, or by reason of any act or default of this claimant.

V.

Claimant denies that all or singular the premises in Article V, on page 11 referred to are true, except as in this answer admitted. [51]

And for a further and distinct answer to the alleged fourth cause of action in said libel stated claimant alleges that said claimant did exercise due diligence and did properly equip, provision and outfit said vessel, and did make said vessel in all respects seaworthy and capable of performing her intended voyage; and that the master, officers, agents and servants of claimant did carefully handle and stow the cargo of libelants, and did reasonably care for the same during the voyage, and did properly deliver the same; and that the springing of the leak in Article IV of said libel, page 9, alleged, and any and all damage or injury to libelant's cargo consequent thereupon, was and were caused by act of God or perils of the sea.

And for a further and distinct answer to the alleged fourth cause of action in said libel stated claimant alleges that said claimant did exercise due diligence and did properly equip, man, provision and outfit said vessel, and did make said vessel seaworthy and capable of performing her intended voyage; and that the master, officers, agents and ser-

vants of claimant did carefully handle and stow the cargo of libelants and did reasonably care for the same during the voyage, and did properly deliver the same; and that any loss, damage or injury to the cargo, in the nature of expenses against the same or otherwise, and any charges against the same, of general average or otherwise, which said loss, damage or injury accrued against said cargo subsequent to the springing of the leak in article IV on page 9 of said libel mentioned, were caused by or resulted from faults or errors in the navigation or the management of said vessel, and that claimant is absolved from all and any liability for said loss, damage or injury by the provisions of the Act of Congress of February 13, 1893, c. 105, 27 Stat. 445. [52]

WHEREFORE claimant prays that the libel herein filed may be dismissed, and that claimant recover its costs and charges herein incurred, and for such other relief as may be just.

ANDROS & HENGSTLER,
Proctors for Claimant.

(Duly verified.)

[Endorsed]: Filed Jun. 1, 1909. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [53]

(Title of Court and Cause.)

**Deposition of George Ledru, Taken on Behalf of the
Respondent Before Francis Krull, Esq., United
States Commissioner, etc.**

BE IT REMEMBERED, that on Thursday, March 25th, 1909, pursuant to stipulation of counsel here-

unto annexed, at the office of L. T. Hengstler, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, Esq., a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., George Ledru, a witness produced on behalf of the respondent.

W. S. Burnett, Esq., appeared as proctor for the libelants, and L. T. Hengstler, Esq., appeared as proctor for the respondent, and the said witness, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon de-
pose and say as is hereinafter set forth. [54]

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of George Ledru may be taken *de bene esse* on behalf of the Respondent at the office of L. T. Hengstler, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, on Thursday, March 25th, 1909, before Francis Krull, Esq., a United States Commissioner for the Northern District of California, and in shorthand by Edward W. Lehner.

It is further stipulated that the deposition, when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as

(Deposition of George Ledru.)

to materiality and competency of the testimony are reserved.

It is further stipulated that the deposition may be used and read in evidence in the case of the Compagnie Maritime Francaise, a French Corporation, Libelant, vs. The Cargo of the French Bark "Duc d'Aumale."

It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.

F. Henry, by stipulation, acted as Interpreter.)

[55]

GEORGE LEDRU, called for the claimant, sworn.

(F. Henry was sworn as interpreter.)

Mr. HENGSTLER.—Q. Captain, what is your full name? A. George Ledru.

Q. You are the master of the French vessel "La Peruse," are you not? A. Yes, sir.

Q. How long have you been master of vessels generally? A. Since October, 1902.

Q. Are you familiar with the French bark "Duc d'Aumale"? A. Yes; I know her well.

Q. How does your present vessel, the "La Peruse," and the bark "Duc d'Aumale" compare as to type of construction and size?

A. As far as construction and type of the vessel is concerned, they are very nearly the same.

Q. Captain, have you ever carried in your vessel a cargo consisting of coke and pig iron?

A. Yes, this present voyage.

(Deposition of George Ledru.)

Q. In the "La Peruse"? A. Yes, sir.

Q. Then you are familiar with the stowage of a cargo of that type, are you, Captain? A. Yes, sir.

Q. Your vessel has a between-decks and a lower hold, has it not? A. Yes, sir.

Q. How, in a general way, is the cargo distributed as to the quantity which is carried in the between decks and the quantity which is carried in the lower hold? A. You mean a general cargo?

Q. In the case of a general cargo, yes.

A. For a 2,800 ton cargo, 800 tons in the between-decks and 2,000 to 2,100 in the hold.

Q. Would that rule vary in the case of a cargo consisting of coke and pig iron?

A. No, it does not vary.

Q. Then I understand, Captain, that it does not make any difference [56] whether it is a general cargo or whether it is a specific cargo, the general proportion would be about the same, would it not?

A. The proportion would be about the same. The space would be more or less larger, but the weight would be the same.

Q. That means the proportion of the weight would be the same? A. Yes, sir.

Q. Supposing the entire cargo were 3,000 tons, how should it be distributed,—about?

A. If the cargo is 3,000 tons, the between-decks would carry from 800 to 850, and the balance in the hold.

Q. Now, Captain, if it appears that in the case of the "Duc d'Aumale" there was 760 tons of cargo in

(Deposition of George Ledru.)

the between-decks and about 1900 tons in the lower hold, is that the correct stowage as far as this general rule is concerned, which you have mentioned?

A. Yes, sir; because the proportion I have indicated is not an absolute rule—20 tons or more or less.

Q. In other words, there is some latitude in this?

A. Yes, according to the nature of the cargo.

Q. Captain, do you know what the cubic contents of the "La Peruse" and the "Duc d'Aumale" are?

A. Yes. The cubic contents of both vessels is about the same. There is about 4,900 cubic meters.

Q. Now, Captain, I want to show you the stowage plan of the "Duc d'Aumale," marked "Respondent's Exhibit 7," from which you notice that there are in the lower hold about 600 tons of pig iron in the place indicated on the plan, and in the between-decks about 60 tons of pig iron stowed in the place indicated here. From your experience in stowing vessels, can you tell whether the place of stowage of that cargo is the proper place, assuming that the entire rest of the hold is filled up with coke?

A. In my opinion, it is the best place for such a cargo of coke. [57]

Q. For such a cargo of coke and pig iron?

A. And pig iron.

Q. Captain, generally speaking, in what place in your vessel would you put the pig iron if there are 660 tons of pig iron to be carried and the rest of the cargo is coke?

A. At the same place where it is there.

Q. What place is that, Captain?

(Deposition of George Ledru.)

A. It is the place the widest in the ship, and where the ship is strongest.

Q. It is the widest and strongest part of the vessel, is it? A. Yes, sir.

Q. Now, Captain, as to the distribution of this cargo of pig iron, having 600 tons in the hold and 60 tons in the between-decks, would you say that that was a proper distribution? A. Yes, sir.

Q. Why, Captain?

A. The vessel, with 60 tons of pig iron in the between-decks and the cargo of coke which was filling up the between-decks, was sufficiently stable.

Q. With this method of stowage have you any means of telling where the center of gravity would be located on this ship,—about?

A. Approximately, yes.

Q. Where?

A. About at the eye of the between-deck near the mainmast.

Q. What would be the effect upon the center of gravity, Captain, if more than 60 tons of pig iron had been placed in the between-decks?

A. The center of gravity would have been raised.

Q. It would lie higher? A. Yes, sir.

Q. And what would be the effect of that on the stability of the vessel?

A. The vessel would have been less stable, the rolling would have been greater.

Q. Now, Captain, assuming that the number of tons of pig iron in the between-decks is not changed and that there are left in the lower hold 600 tons of

(Deposition of George Ledru.)

pig iron, but that they are distributed [58] differently in the lower hold from the way in which they are distributed here, and are distributed this way: one pile of pig iron is placed in the fore part of the after hatch; about 350 tons are placed there; another pile is placed in the after part of the after hatch, and a part is placed just abaft of the foremast, the coke being just the same. What would the effect of that spreading of the pig iron in the lower hold be upon the vessel? Would she be more stable or less stable than she was with the former method of stowage?

A. As far as the stability of the ship is concerned, it is not a case of very much importance.

Q. Would that change in the stowage affect the vessel in any way?

A. Yes; in my opinion the vessel would strain more.

Q. Why, Captain?

A. There is 350 tons in a small place; here in the forward part of the vessel, too, there is another pile on a small place, and between those two lots the ship has nothing to bear except the coke, which is light; and then the ship under the strain of the two weights in those extremities strains. It is like she was swinging on a pivot.

Q. Now, Captain, as I understand you, this is your answer: I hold in my hand this ruler, which we will say is part of the line of the lower hold of the vessel; at one extremity of this ruler is a weight and at the other extremity there is a weight, and between those

(Deposition of George Ledru.)

two places there is a space that bears no weight. The effect of that, by these weights pressing down upon the extremities, would be to produce a strain upon the vessel? A. Yes, at the center of the vessel.

Q. The strain being in the center of the ship?

A. Yes.

Q. Is that the only objection, Captain, that you would have to disturbing the stowage arrangement in a lump and spreading the [59] cargo as it was spread in the illustration which I gave you a while ago?

A. Did you say also there was some pig iron in the after end of the ship?

Q. Yes, aft of the after hatch.

A. In putting pig iron in the after part of the ship, it is the place where the ship is getting narrow.

Q. How is the ship there as to strength, weak or strong, as compared with the center?

A. The ship is very much weaker at this place than at the center of the ship.

Q. For that reason alone it would be objectionable to place heavy cargo in the rear of the hold, would it not?

A. For this reason alone I would not have put heavy cargo in the aft part of my vessel.

Q. Captain, how do the pumps on the "La Peruse" compare with the pumps on the "Duc d'Aumale"?

A. They are the same.

Q. Same model, same size and the same system?

A. Yes, sir.

Q. How do those pumps compare with other

(Deposition of George Ledru.)

pumps that you have seen on French vessels of the same type, Captain?

A. In general, all French vessels are provided with the same system of pumps. In this company we have the system of pump known under the name of Jappy, which some other companies have not.

Q. Do you know how many ships your company owns, Captain? A. 14.

Q. And all the ships of your company have this kind of pumps, have they? A. Yes, sir.

Cross-examination.

Mr. BURNETT.—Q. Was your cargo exclusively pig iron and coke on the last voyage that brought you to San Francisco?

A. No; there was some girders.

Q. Was that the only other cargo in addition to pig iron and coke? A. Yes, sir. [60]

Q. What tonnage of girders did you have?

A. 535 tons.

Q. How much pig iron? A. 175 tons.

Q. How much coke? A. 2,000 tons.

Q. So your total cargo was 2,710 tons?

A. Yes, 2,705 to 2,710 tons. On the coke I don't know at 10 tons more or less what I had.

Q. Was the cubic carrying capacity exhausted?

A. Yes, sir.

Q. Do you know what tonnage of cargo the "Duc d'Aumale" carried? A. You mean dead weight?

Q. Yes.

A. The "Duc d'Aumale" can carry the same

(Deposition of George Ledru.)

amount of cargo as the "La Peruse," which is about 3,000 tons.

Q. Now, would you draw a rough sketch showing the manner of stowage of your vessel on this last trip.

A. The girders were placed from the after hatch up to the mainmast, the largest part, about 400 tons there.

Q. Write "girders" there.

A. In the between-decks 25 tons of girders, and the balance of the girders, about 110 tons, in the main hatch—under the main hatch. At the after part of the after hatch in the between-decks there was 50 tons of pig iron, and the balance of the pig iron was stowed under the 400 tons of girders, about 100 tons.

Q. 25 tons of pig iron?

A. There was also 25 tons of pig iron stowed at the foot of the mainmast.

Q. And the rest of the cargo was coke distributed throughout the ship? A. Yes, full of coke.

Q. And your vessel was filled up entirely?

A. Yes, everything was filled up.

Q. Describe these girders; what are they in length?

A. They are steel beams, the longest are about 40 feet long.

Q. They are not curved, are they? A. No, sir.

Q. They are straight? A. Yes, sir. [61]

Q. Did you carry your ship's stores in the same relative portion of your vessel as the "Duc d'Aumale" did? A. Yes, sir.

(Deposition of George Ledru.)

Q. What was the weight of your stores?

A. About 60 tons, including the coal and water.

Q. Did that completely fill the space reserved for stores on the vessel when she started?

A. Not quite. There is the water; there is the storeroom; there is the coal.

Q. Did you carry coal as indicated on the sketch?

A. We had 30 tons of coal as marked in the sketch.

Mr. BURNETT.—I will ask to have that marked Libelants' Exhibit "X."

(The diagram is marked Libelants' Exhibit "X.")

Q. Do you know whether the "Duc d'Aumale" carried that 30 tons of coal in the position that you have indicated? A. 30 tons, when she left.

Q. Was the "Duc d'Aumale" built by the same people that built your vessel? A. No, sir.

Q. Do you know the beam of the "Duc d'Aumale" at the center? A. A little more than 12 meters.

Q. Is that the same measurement as your own vessel at the same point of the vessel?

A. Yes. As far as the hull is concerned, it is the same ship.

Q. Do you wish to be understood as testifying that the hull is identically the same in its measurement—the hull of the "Duc d'Aumale" as the "La Peruse"?

A. Yes, substantially.

Q. Will you state any difference that there may be in the hulls of the two vessels?

A. I don't know of any.

Q. Have you ever sailed in the "Duc d'Aumale"?

A. No, sir.

(Deposition of George Ledru.)

Q. Have you ever carried cargoes of coke, pig iron and girders, or coke and pig iron before, where that constituted the sole cargo? [62] A. No, sir.

Q. How long have you been in the "La Peruse"?

A. Two years.

Q. How many voyages before this last?

A. One voyage.

Q. What was your cargo on that voyage?

A. General cargo, cement.

Q. Any iron or girders? A. Yes, iron.

Q. Will you state roughly what your cargo was?

A. Bleaching powder, fertilizer, mineral water, liquors, cement and iron.

Q. Where was your voyage to?

A. Antwerp to San Francisco.

Q. Do you know what the weight of girders is to the cubic yard, and the space they occupy?

A. No, not exactly.

Q. Do you consider your vessel was properly stowed on the way out as per the plan you have given us?

A. My vessel was navigated in perfect condition, and did not strain.

Q. You do not think it could have been stowed in any better way than it was?

A. No. If I was to make another trip I would stow her in the same way.

Q. Why would you do that, on your experience on this voyage?

A. Yes, and from my experience in general.

Q. In referring to the plan of the "Duc d'Au-

(Deposition of George Ledru.)

male," I understand you to have testified that in your judgment that vessel was properly stowed?

A. Yes, sir.

Q. Now, does that statement rest on the assumption that the vessel was entirely filled, that is that all her carrying capacity was exhausted, and filled with the merchandise as appears from that plan?

A. I put my opinion on the fact that the ship was full of coke and the pig iron being stowed as marked on the plan, the ship should be very stable.

Q. How do you account for the fact that you carried 2,710 tons of cargo and the "Duc d'Aumale" 2,660 tons, if both were filled and [63] the carrying capacity of each vessel was the same?

A. It must be taken into consideration that the "La Peruse" had 720 tons of dead weight cargo and the "Duc d'Aumale" had only 660 tons.

Q. Where was that dead-weight cargo stowed in the "Duc d'Aumale"?

A. At the after part of the main hatch in the lower hold, and 60 tons of pig iron in the between-decks.

Q. I understand then that the "Duc d'Aumale" did not carry a full cargo; is that the net result of your testimony? A. No, sir.

Q. Without knowing the space that is occupied by girders, your conclusions as to stowage and proper stowage, where they are concerned, must be more or less guess work, must they not?

A. The pig iron and the girders occupied about the same space.

Q. Do you know what space is occupied by pig iron

(Deposition of George Ledru.)

in cubic measurements? A. No, sir.

Q. Do you know what space in cubic measurements is occupied by coke? A. No, sir.

Q. When did you become familiar with the "La Peruse"?

A. After the first cargo was taken at Hamburg.

Q. When was that?

A. In July, 1907.

Q. When did you become familiar with the "Duc d'Aumale"?

A. I have seen the "Duc d'Aumale" in port in 1903 at Dunkirk, and I took charge of a vessel exactly the same as the "Duc d'Aumale" for a month and a half to overlook the loading in place of the captain.

Q. What is the difference in rig between your boat and the "Duc d'Aumale"?

A. The "Duc d'Aumale" is a French bark, and the "La Peruse" is a French ship.

Redirect Examination.

Mr. HENGSTLER.—Q. There is one question I want to ask you, captain: I notice both in the stowage plan of the "Duc d'Aumale" [64] and in your rough sketch of the stowage of the "La Peruse" that the heavy cargo in the hold is not exactly in the widest part of the ship but a little aft of that. What reason is there for that?

A. To bring the ship down by the stern; the ship being very hard to go down by the stern.

Q. The heavy cargo is stowed there to make the ship go down by the stern, because if there were no

(Deposition of George Ledru.)

heavy cargo there she would not go down by the stern; that is the reason, is it not?

A. Yes, and in order to have a good navigation the vessel must be about 10 centimeters lower in the water at the stern. In the "La Peruse" I put 20 centimeters.

Q. To navigate her freely, is that the idea?

A. Yes, sir.

Recross-examination.

Mr. BURNETT.—Q. What do you call the widest part of the ship? Mark it on your diagram.

A. At the main hatch.

Q. At the opening marked "M"? A. Yes.

Q. You had practically those 110 tons of girders immediately below the main hatch?

A. Yes, sir, at the end of the other lot.

Q. Were these built up at all or were they at the bottom of the ship from side to side?

A. They were from side to side.

Q. That was true with the rest of your dead weight cargo aft, was it? A. Yes, sir.

Q. These figures on this diagram mean tons, do they, although you have not written them in?

A. Yes.

Q. On Libelants' Exhibit "X"? A. Yes.

Q. I notice from Libelants' Exhibit "X" that your vessel had a great deal more dead weight of the heavy cargo further forward than in the "Duc d'Aumale."

A. We put 50 tons of pig iron in the between-deck at the last minute, aft of the after hatch. [65]

(Deposition of George Ledru.)

Q. When you were loading your vessel you did not contemplate at first putting in that 50 tons aft, did you?

A. If the ship had been in good trim I would have put them on top of the 25 tons of girders, to be near the center of the vessel.

Q. Was that what you expected to do?

A. Yes, sir.

Q. Did you direct the stowage of this vessel yourself? A. Yes, sir, I did. [66]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, Francis Krull, Esq., a United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing deposition is that the testimony of the witness George Ledru is material and necessary in the cause in the caption of the said depositions named, and that he is bound on a voyage to sea and will be more than one hundred miles from the place of trial at the time of trial.

I further certify that on Thursday, March 25th, 1909, at 3 o'clock P. M., I was attended by W. S. Burnett, Esq., proctor for the libelants, L. T. Hengstler, Esq., proctor for the respondent, F. Henry, Esq., who, by stipulation, was sworn to act as interpreter, and by the witness who was of sound mind and lawful age, and that the witness was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in

said cause; that said deposition was, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Edward W. Lehner, and afterwards reduced to typewriting; that the reading over and signing of said deposition of the witness was by the aforesaid stipulation expressly waived.

Accompanying said deposition and annexed thereto and forming a part thereof is Libelants' Exhibit "X," introduced in connection therewith and referred to and specified therein. Such exhibit is endorsed by me with my official title. [67]

I further certify that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the United States District Court for the Northern District of California, the Court for which the same was taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 2d day of June, 1909.

[Seal]

FRANCIS KRULL,

U. S. Commissioner, Northern District of California, at San Francisco.

[Endorsed]: Filed Jun. 2, 1909. Jas. P. Brown,
Clerk. [68]

(Title of Court and Cause, and Number—13,959.)

**Depositions of E. Deddes, A. Van Veen, Y. de Jonge
and J. H. v. d. Berg.**

[Seal]

To All to Whom These Presents Shall or may Come:

I, Mr. Charles Albert van Renterghem, named in the attached stipulation as commissioner to take the depositions of the within-named E. Deddes, A. Van Veen, Y. de Jonge, and J. H. v. d. Berg, upon interrogatories, direct and cross, attached to said stipulation, do hereby certify that, pursuant to said stipulation, the said witness E. Deddes, named therein, appeared before me on the 30th day of August, 1910; that said witness A. Van Veen, named therein, appeared before me on the 30th day of August, 1910; that said witness Y. de Jonge, named therein, appeared before me on the 30th day of August, 1910, and that said witness J. H. v. d. Berg, named therein, appeared before me on the 31st day of August, 1910; that upon the days mentioned, after administering oath, I took and completed the answers or deposition to said interrogatories and cross-interrogatories of each one of the said witnesses, said answers or deposition being hereunto annexed. Which said answers or deposition were taken down by a competent reporter designated by me therefor, and previously sworn to correctly take and transcribe such answers or deposition.

And I further certify that, previous to taking the said answers or deposition, I duly administered to each of said witnesses the following oath:

"You swear true answers to make to all such questions as shall be asked you upon these interrogatories and cross-interrogatories, without fear of, or favor to, either party hereto, and therein you swear to speak the truth, the whole truth, and nothing [69] but the truth, so help you God."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal at Rotterdam, Holland, this 1st day of September, 1910.
[70]

(Title of Court and Cause, and Number.)

Interrogatories to be Propounded to E. Deddes, at Rotterdam, Holland, on Behalf of Compagnie Maritime Francaise and French Barque "Duc d'Aumale."

1. What is your full name, age and occupation?
2. How long have you been engaged in such occupation?
3. What professional experience have you had in the stowage of vessels, in particular with cargoes of coke, and cargoes of pig iron, and mixed cargoes of coke and pig iron, or mixed cargoes of similar description stowed therein?
4. To what extent are you familiar with the French Barque "Duc d'Aumale," and vessels of her type?
5. Suppose said French Barque "Duc d'Aumale," 83 meters long in the keel, and 12 meters beam, and of 1,944 25/100 registered tons net, was loaded with 660 tons of pig iron and approximately 2,015 tons of coke, to be carried from Rotterdam around Cape Horn to the port of San Francisco, fill-

ing the vessel's entire carrying space, in the following manner: 600 tons of pig iron was stowed in the lower hold over a space about 60 feet long and 30 feet wide, extending from the after part of the mainhatch to the fore part of the after-hatch; the remaining 60 tons were kept back till the last to trim the vessel and were finally stowed in the between-decks for that purpose; the whole remainder of the space in the hold and between-decks was filled with coke, as illustrated in the diagram marked "Respondent's Exhibit 7": What is your opinion as to the propriety and efficiency of said stowage in said vessel; and what is your opinion as to the seaworthiness of said vessel as far as concerns stowage?

6. Please state the reasons for your opinion.

7. If the stowage described in the preceding question had been modified in the following respect, viz.: the 600 tons of pig iron in the lower hold had been distributed over the lower hold as follows: one pile in the fore part of the after-hatch, about 350 tons; another pile in the after part of the after-hatch, and a small pile abaft of the foremast; but otherwise the stowage of the cargo had been the same: would this modification of the stowage, in your opinion, have been more efficient, or less efficient than the method described in question 5?

8. Please state the reasons for your opinion contained in your answer to question 7.

9. Please describe the effect of the first, and the second, methods of stowage, respectively, upon the straining of the hull, and the rolling and pitching of the vessel.

10. Do you know the pumps installed in the "Duc d'Aumale"?

11. If you answer the preceding question in the affirmative, state how the pumps compare with pumps used on vessels of the same type, and state your opinion as to the sufficiency and efficiency thereof.

. Cross-interrogatories to be Propounded to
E. DEDDES.

1. Do you recognize a general rule in relation to the stowage of sailing vessels that two-thirds of the cargo should be stowed in the lower hold and one-third in the between-decks?

2. If you answer the last question in the affirmative, please state the reasons why this rule was not adhered to in the stowage of the "Duc d'Aumale"?

3. Assume that the "Duc d'Aumale's" carrying space capacity was not exhausted, and that she carried proportionately less of each of the same classes of cargo; how would you say in each instance, on the assumption of the reductions undernoted, that the said ship should be stowed:

A. If the quantity of each class of cargo carried was reduced (on a basis of weight) two and one-half per cent?

B. If the quantity of each class of cargo carried was reduced (on a basis of weight) five per cent?

C. If the quantity of each class of cargo carried was reduced (on a basis of weight) seven and one-half per cent?

D. If the quantity of each class of cargo carried was reduced (on a basis of weight) ten per cent?

E. If the quantity of each class of cargo carried was reduced (on a basis of weight) fifteen per cent?

F. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty per cent?

G. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty-five per cent?

4. State whether or not it would have been possible to have stowed the "Duc d'Aumale" in a seaworthy manner had her cargo consisted of a greater proportion of pig iron and a less proportion of coke and at the same time the carrying space of the vessel being completely occupied by the cargo carried? If so, please state how many more tons of pig iron and how many less tons of coke could have been carried, and, under such circumstances, how should the vessel have been stowed. In your answer describe the method of stowage of such cargo on such vessel in each instance where the weight of pig iron which was in fact carried by the "Duc d'Aumale" is increased cumulatively by lots of fifty tons.

5. State whether or not it would have been possible to have stowed the "Duc d'Aumale" in a seaworthy manner had her cargo consisted of a greater proportion of coke and a less proportion of pig iron and at the same time the carrying space of the vessel being completely occupied by the cargo carried? If so, how many more tons of coke and how many less tons of pig iron could have been carried, and, under such circumstances, how should the vessel have been stowed? In your answer describe the method of stowage that would be applicable to such cargo of

such vessel in each case where the weight of coke carried more than what the "Duc d'Aumale" did actually carry is increased by lots of fifty tons.

6. If, in answer to direct interrogatory 10, you shall have stated that you know the pumps installed in the "Duc d'Aumale," please give, in detail, on what you base your knowledge of said pumps, and state whether or not, prior to the sailing of said vessel and in the month of August or September, 1907, at the port of Rotterdam, you made any tests or examinations of said pumps, giving the details of such examinations and tests.

(Title of Court and Cause, and Number.)

Answers to Interrogatories by E. Deddes.

Answers to interrogatories propounded to E. Deddes, a witness in the above-entitled action, residing at Rotterdam, taken by Mr. C. A. van Renterghem.

Said witness, being first duly sworn, on oath deposes and says:

In answer to the first interrogatory: Evert Deddes; 73 years old; marine surveyor; member of the Court of Dutch Board of Trade.

To the 2d: Twenty-five years.

To the 3d: I have been mate and master of both sailing and steamships for over 30 years and have also since had a large experience in the stowage of vessels as a surveyor, with all kinds of cargoes; in particular I had experience in stowage of mixed cargoes of pig iron and coke.

To the 4th: I have seen the "Duc d'Aumale" but

have not been on board of her, but I know the type of vessel she is and I have had experience of loading vessels of this type.

To the 5th: My opinion is that the said stowage is a good and efficient one. The ship would be seaworthy as far as stowage is concerned. A well-built ship of the type of the *Duc d'Aumale* will be able to carry a cargo stowed in this way.

To the 6th: I base my opinion on my own experience.

To the 7th: I do not think there would be any material difference. [71]

To the 8th: I base my opinion on my own experience.

To the 9th: I do not think there would be any material difference.

To the 10th: No.

To the 11th, 12th, 13th, 14th and 15th I cannot answer.

Cross-interrogatories.

To the 1st: There is no such rule. The stowage depends on the beams and lines of the vessel and the nature of the cargo and other particulars in each case.

To the 2d: I cannot answer.

To the 3d: I do not know sufficient of the dimensions of the "*Duc d'Aumale*" to answer this question.

To the 4th: It would have been possible to carry a little over 330 tons more pig iron and about 40 or 50 tons less of coke, but it would not have been advisable because the vessel would sail better and

easier loaded as she was loaded. If the 330 tons more pig iron were loaded I should put 230 tons in the lower hold and 100 tons in the 'tween-deck and spread the pig iron in the lower hold over a greater length.

To the 5th: I do not believe the "Duc d'Aumale" would be seaworthy with less than 600 tons of pig iron.

To the 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th 14th and 15th I cannot answer.

w. s.—E. DEDDES. [72]

(Title of Court and Cause, and Number.)

Interrogatories to be Propounded to Y. de Yonge, at Rotterdam, Holland, on Behalf of Compagnie Maritime Francaise and French Barque "Duc d'Aumale."

1. What is your full name, age and occupation?
2. How long have you been engaged in such occupation?
3. Describe the extent and nature of your experience with sailing vessels, both of wood and of iron, in particular with the surveying, examination and stowage thereof, and more particularly with the stowage of cargoes of coke, and cargoes of pig iron, or mixed cargoes of similar description stowed therein.
4. To what extent are you familiar with the French Barque "Duc d'Aumale"?
5. Please refer to "Respondent's Exhibit 2" and state whether or not you are the person who made and signed the "Survey Report on Stowage," dated Rot-

terdam, the 17th Sept., 1907.

6. Please state if the facts stated in said report are correct, and particularize the extent and result of your examination or examinations of the ship, and especially of the bottom thereof.

7. Please state the condition in which the ship was, as to seaworthiness of structure when she left the port of Rotterdam in September, 1907.

8. Please state the reasons for your opinion as expressed in answer to question 7.

9. Please state your opinion on the seaworthiness, as to stowage, of the "Duc d'Aumale" when she left the port of Rotterdam in September, 1907, adding the reasons for your opinion to your answer.

10. If the stowage of the cargo of the "Duc d'Aumale," as surveyed by you and described in your report of September 17, 1907 (Respondent's Exhibit 2), had been modified in the following respect, viz.: the 600 tons of pig iron in the lower hold had been distributed over the lower hold as follows: one pile in the fore part of the after-hatch, about 350 tons; another pile in the after part of the after-hatch, and a small pile just abaft of the foremast, but otherwise the stowage of the cargo had remained the same: would this modification of the stowage, in your opinion, have been more efficient, or less efficient than the method used when the vessel left Rotterdam in September, 1907?

11. What would have been the comparative effect of the two methods of stowage referred to in questions 9 and 10 upon the straining of the hull and the rolling and pitching of the vessel?

12. Are you familiar with the type of pumps which was installed in the "Duc d'Aumale" at the time of her departure from Rotterdam in September, 1907?

13. If your answer to the preceding question be in the affirmative, please state all the facts within your knowledge, and also your opinion, and the reasons therefor, respecting the efficiency and sufficiency of said pumps; and, if you know, kindly state the condition of said pumps at the time of the vessel's departure from Rotterdam in September, 1907.

Cross-interrogatories to be propounded to Y. de YONGE.

1. Please state the cubic capacity of the between-decks and the lower hold of the "Duc D'Aumale."

2. If, in answer to the direct interrogatories, you shall have stated that you made an examination of the "Duc D'Aumale" while she was at the port of Rotterdam in August or September, 1907, please state at what place or shipyard in the port of Rotterdam you made such examination, and how far such examination or examinations were made personally by you; please state the exact dates thereof and the names of any and all persons who were present at the time with you; please give the names and addresses of all persons participating in such examination or doing any work on the hull or bottom of the "Duc D'Aumale" during said time.

3. State what was done by you personally to ascertain if the rivets in the hull and bottom of said ship were fast and in good condition.

4. In reference to the stowage of the "Duc D'Aumale" at Rotterdam in September, 1907, will

you state whether or not the cargo carrying capacity of said vessel was completely filled when her loading was completed?

5. Do you not recognize a general rule in relation to the stowage of sailing vessels that two-thirds of weight of the cargo should be stowed in the lower hold and the remaining one-third of weight of cargo in the between-decks?

6 If you answer the last question in the affirmative, please account for the fact that this rule was not adhered to in the case of the stowage of the "Duc D'Aumale."

7. In your judgment, would the stowage of the "Duc D'Aumale" have been better had the iron in the vessel been stowed slightly further forward than it was, namely, at the point in the vessel where her beam is greatest?

8. If you shall have answered the last question in the affirmative, please state why it was that in the case of the "Duc D'Aumale" this was not done.

9. Please state, in detail, the extent of your experience in surveying and examining the hulls and bottoms of iron or steel vessels.

10. Assume that the "Duc D'Aumale's" carrying space capacity was not exhausted, and that she carried proportionately less of each of the same classes of cargo; how would you say in each instance, on the assumption of the reductions undernoted, that the said ship should be stowed:

A. If the quantity of each class of cargo carried was reduced (on a basis of weight) two and one-half per cent?

B. If the quantity of each class of cargo carried was reduced (on a basis of weight) five per cent?

C. If the quantity of each class of cargo carried was reduced (on a basis of weight) seven and one-half per cent?

D. If the quantity of each class of cargo carried was reduced (on a basis of weight) ten per cent?

E. If the quantity of each class of cargo carried was reduced (on a basis of weight) fifteen per cent?

F. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty per cent?

G. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty-five per cent?

11. State whether or not it would have been possible to have stowed the "Duc D'Aumale" in a seaworthy manner had her cargo consisted of a greater proportion of pig iron and a less proportion of coke and at the same time the carrying space of the vessel being completely occupied by the cargo carried. If so, please state how many more tons of pig iron and how many less tons of coke could have been carried, and, under such circumstances how should the vessel have been stowed. If your answer describe the method of stowage of such cargo on such vessel in each instance where the weight of pig iron which was in fact carried by the "Duc D'Aumale" is increased cumulatively by lots of fifty tons.

12. State whether or not it would have been possible to have stowed the "Duc D'Aumale" in a seaworthy manner had her cargo consisted of a greater proportion of coke and a less proportion of pig iron

and at the same time the carrying space of the vessel being completely occupied by the cargo carried. If so how many more tons of coke and how many less tons of pig iron could have been carried, and, under such circumstances, how should the vessel have been stowed? In your answer describe the method of stowage that would be applicable to such cargo of such vessel in each case where the weight of coke carried more than what the "Duc D'Aumale" did actually carry is increased by lots of fifty tons.

13. Can you, when you are thoroughly familiar with a vessel, determine in advance the best manner of stowing a vessel in reference to specific quantities and kinds of cargo that it is contemplated the vessel should carry?

14. If you answer the last question in the affirmative, will you please explain why it ever becomes necessary or proper to withhold a parcel of the cargo, as in the case of the "Duc D'Aumale" some sixty tons, for the purpose of trimming the vessel?

15. If, in answer to the direct interrogatories, you have stated that you know the pumps of the "Duc D'Aumale" to have been efficient and sufficient at the time of the vessel's departure from Rotterdam in September, 1907, please state what examination was personally made by you as to the sufficiency and efficiency of the pumps, stating particularly any tests that were made by you of said pumps and the names of all persons present thereat, giving the details of such tests.

(Title of Court and Cause and Number.)

Answers to Interrogatories by Y. de Jonge.

Answers to interrogatories propounded to J. de JONGE, a witness in the above-entitled action, residing at Rotterdam, taken by Mr. C. A. van Renterghem.

Said witness, being first duly sworn, on oath deposes and says:

In answer to the first interrogatory: Yzebrand de Jonge; 52 years old; marine surveyor.

To the 2d: 10 years.

To the 3d: I had a very large experience both with iron and wooden sailing vessels and steamers. I was 27 years at sea, 10 years in sailing vessels in the general trade to Mexico, North America, South America, Argentine, River Plata, South Africa and the Dutch East Indies, and the remaining 17 years in steamers. I became master at the age of 29 years on the steamer "Rhenania" and later on the steamer "Iberia Hispania," all from the same firm Wm. H. Muler & Co. I left this company at the age of 37 years but went to sea again on the steamer "Barendrecht," of the firm of ph. van Ommeren. At the age of 39 this firm sent me to Riga for chartering business and superintending the stowage of their steamers in the general good trade between Riga and Rotterdam. At the age of 41 I began business as a marine surveyor at Rotterdam, in which occupation I have held up to now some 2,000 surveys on river and sea-going craft damages, collisions, stowage of cargoes, in short everything in connection with shipping and often

gave nautical advises to lawyers. After the earthquake of San Francisco a good many sailing vessels left this port with coke, pig iron, cement, girders and other sorts of [73] iron and general goods for San Francisco, Tacoma, Seattle, etc., and Messrs. Wambersie & Son, and Kuyper, van Dam & Smeer, as agents, appointed me to survey the stowage of those ships, for instance, the following ships: Britt. "Riverside," Britt. "Matterhorn," Britt. "Waterloo," Britt. "Altair," Britt. "Alexander Black," Britt. "Crown of Germany," Britt. "Antartic Stream," French barque "Duc d'Aumale," French "Marie Madeline," French "Germaine," Britt. "Cissie," Britt. "Black Breas," Britt. "Haugemont," French "General de Negrier," French "Chateau-Briand," and many others.

The "General de Negrier" was loaded with pig iron and coke and all the pig iron was stowed 550 tons in the lower hold and 50 tons in the 'tween-decks, very similar to the "Duc d'Aumale," and all were stowed on the same principle.

To the 4th: I have been several times on board of the French barque "Duc d'Aumale" and I am familiar with her construction and dimensions generally, so far as is required for the purpose of stowing the vessel.

To the 5th: Yes.

To the 6th: Quite correct. The 11th September, 1907, I went on board while the vessel was lying in the Binnenhaven at Rotterdam. The stevedore had just commenced to load coke and so I went down in the holds and found 600 tons of the pig iron stowed

in the lower holds from the after part of the main hatchway to the fore part of the after hatchway covered with Russian mats and deals, and boards were put on top to secure them. So it was well covered and separated from the coke. I had previously arranged the stowage with the master and Mr. Hoogerwerff, who has had very large experience in stowing this class of cargo; we were [74] all satisfied that to stow 600 tons of pig iron in the lower hold and 60 in the 'tween-decks would be perfectly satisfactory. After that I went through the ship and found the decks well caulked, frames, beams and plating was good and as usual, and although I did not inform the age of the vessel, she had the appearance of being a ship of about 8 to 9 years old. I did not examine the bottom. Her rigging was also in good condition, but I did not see the sails. She was a fine model of craft, built after the usual modern dimensions, viz., sufficient beam and stiff enough to shift without ballast.

To the 7th: I went on board again the 18th September, 1907. She was then nearly loaded and as her draft fore and aft was exactly good, it was not necessary to trim her with the 60 tons of pig-iron, so this was covered with mats and boards and remained where it was. The vessel was not down to her marks, and could have loaded more cargo as far as concerns her dead weight, at any rate she had a large freeboard and was lying neatly on the water and perfectly seaworthy. As far as concerns the seaworthiness of the structure, I refer to answer No. 6.

To the 8th: I have, as already stated, had a very long experience of loading cargoes similar to that of the "Duc d'Aumale," and my opinion is based on that experience conferred by Mr. Hoogerwerff and the master.

To the 9th: She was perfectly loaded and as far as concerns the stowage perfectly seaworthy, in fact, the very ship a sailor likes, because such a cargo cannot shift and has a minimum risk for burning, as it produces no gases; and the additional pig iron made the vessel stiff enough [75] to carry sail much better than coke alone which makes a ship too tender, in fact, most sailing vessels loaded with coke alone are obliged to stiffen the vessel with ballast in the bottom at considerable expenses. At the same time she would not be too stiff with only 600 tons in the lower hold.

To the 10th: No, this would have made no practical difference.

To the 11th: The vessel would have been a little stiffer if anything which would add to the rolling, and therefore this would have been a disadvantage.

In my opinion there would be no difference so far as straining is concerned.

To the 12th: No.

To the 13th, 14th and 15th I cannot answer.

Cross-interrogatories.

In answer to the 1st: I do not know.

To the 2d: I refer to my answer to No. 6, direct interrogatories. All my examination and survey was done by myself personally.

To the 3d: Nothing.

To the 4th: The vessel was completely filled, but was not down to the marks.

To the 5th: No.

This all depends upon the stability of the vessel. If a vessel is broad and flat built and has a full form, such a vessel is stiff and [76] requires the weight of the cargo higher up.

On the contrary, if a vessel is narrow and deep, with a fine form, she will be tender and requires the weight of the cargo lower down.

To the 7th: Because the ship would not be in proper trim and would be far too much down by the head. The pig iron was stowed round the main-mast, the strongest part of the vessel.

To the 8th I cannot answer.

To the 9th: I refer to my answer to No. 3, direct interrogatories.

To the 10th: I cannot answer this question with the information at my disposal.

To the 11th: Yes, she could have carried about 1,000 tons of pig iron and a little less than 2,000 tons of coke; 850 tons of pig iron should be stowed in the lower hold and 150 in the 'tween-decks. The 850 tons would have to be loaded about 10 feet further forward and 10 feet further aft than the 600 tons actually loaded.

To the 12th: The "Duc d'Aumale" must have carried at least 500/600 tons of pig iron to make her seaworthy. If only 500/600 tons of pig iron had been loaded, it should all have been stowed in the lower hold in the same place as the 600 tons were actually loaded.

To the 13th: It is the universal practice in stowing cargoes, such as the "Duc d'Aumale" carried to retain a parcel for the purpose of trimming the vessel if this is possible, otherwise it may prove impossible to fill the vessel and keep her proper trim.

To the 14th: The 60 tons was retained quite properly and in the ordinary course [77] but as a matter of fact the trim was quite satisfactory and the 60 tons in the 'tween-decks were not moved.

To the 15th I cannot answer.

w. s.—Y. DE JONGE. [78]

(Title of Court and Cause, and Number.)

Interrogatories to be Propounded to A. van Veen, at Rotterdam, Holland, on Behalf of Compagnie Maritime Francaise and French Barque "Duc d'Aumale."

1. What is your full name, age and occupation?
2. How long have you been engaged in such occupation?
3. Describe the extent and nature of your experience with sailing vessels, both of wood and of iron, in particular with the surveying, examination and stowage thereof, and more particularly with the stowage of cargoes of coke, and cargoes of pig iron, and mixed cargoes of coke and pig iron, or mixed cargoes of similar description stowed therein.
4. To what extent are you familiar with the French barque "Duc d'Aumale"?
5. Are you the person who certified to an official survey of the "Duc d'Aumale" at Rotterdam in September, 1907, on behalf of the Bureau Veritas, and signed Certificate of Classification No. 57,071 as

Inspector, in space No. 2 on the margin thereof as shown in "Respondent's Exhibit 3"?

6. Please state the extent and result of your examination and survey of said vessel before the signing of said certificate, and state the day of the month of September, 1907, on which you made the survey, and on which you signed the certificate.

7. Please state the condition in which the said vessel was, as to seaworthiness in every respect, on the date of your certificate, and on the day of leaving port in September, 1907.

8. If you are acquainted with the stowage of said vessel on her departure from Rotterdam in September, 1907, please state the source of your knowledge of said stowage and give your opinion on the seaworthiness of said vessel with respect to her stowage at the time of her departure from Rotterdam.

9. Suppose said French barque "Duc d'Aumale," 83 meters long in the keel, and 12 meters beam, and of 1,944 35/100 registered tons net, was loaded with 660 tons of pig iron and approximately 2,015 tons of coke, to be carried from Rotterdam around Cape Horn to the port of San Francisco, filling the vessel's entire carrying space, in the following manner: 600 tons of pig iron was stowed in the lower hold over a space about 60 feet long and 30 feet wide, extending from the after part of the main hatch to the fore part of the after hatch; the remaining 60 tons were kept back till the last to trim the vessel and were finally stowed in the between-decks for that purpose; the whole remainder of the space in the hold and between decks was filled with coke, as illustrated in the

diagram marked "Respondent's Exhibit 7": What is your opinion as to the propriety and efficiency of said stowage in said vessel; and what is your opinion as to the seaworthiness of said vessel as far as concern stowage?

10. Please state the reasons for your opinion.

11. If the stowage described in the preceding question had been modified in the following respect, viz: the 600 tons of pig iron in the lower hold had been distributed over the lower hold as follows: one pile in the fore part of the after-hatch, about 350 tons another pile in the after part of the after-hatch, and a small pile abaft of the foremast; but otherwise the stowage of the cargo had been the same; would this modification of the stowage, in your opinion, have been more efficient, or less efficient than the method described in 9?

12. Please state the reasons for your opinion contained in your answer to question 11.

13. Please describe the effect of the first, and the second methods of stowage, respectively, upon the straining of the hull, and the rolling and pitching of the vessel.

14. Are you familiar with the type of pumps which was installed in the "Duc d'Aumale" at the time of her departure from Rotterdam in September, 1907?

15. If your answer to the preceding question be in the affirmative please state all the facts within your knowledge, and also your opinion, and the reasons therefor, respecting the efficiency and sufficiency of said pumps; and, if you know, kindly state

the condition of said pumps at the time of the vessel's departure from Rotterdam in September, 1907.

Cross-Interrogatories to be Propounded to
A. van VEEN.

1. Please state the cubic capacity of the between-decks and the lower hold of the "Duc d'Aumale,"
2. If, in answer to the direct interrogatories, you shall have stated that you made an examination of the "Duc d'Aumale" while she was at the port of Rotterdam in August or September, 1907, please state at what place or shipyard in the port of Rotterdam you made such examination, and how far such examination or examinations were made personally by you; please state the exact dates thereof and the names of any and all persons who were present at the time with you; please give the names and addresses of all persons participating in such examination or doing any work on the hull or bottom of the "Duc d'Aumale" during said time.
3. State what was done by you personally to ascertain if the rivets in the hull and bottom of said ship were fast and in good condition?
4. In reference to the stowage of the "Duc D'Aumale" at Rotterdam in September, 1907, will you state whether or not the cargo carrying capacity of said vessel was completely filled when her loading was completed?
5. Do you not recognize a general rule in relation to the stowage of sailing vessels that two-thirds of weight of the cargo should be stowed in the lower

hold and the remaining one-third of weight of cargo in the between-decks?

6. If you answer the last question in the affirmative, please account for the fact that this rule was not adhered to in the case of the stowage of the "Duc D'Aumale."

7. In your judgment would the stowage of the "Duc D'Aumale" have been better had the iron in the vessel been stowed slightly further forward than it was, namely, at the point in the vessel where her beam is greatest?

8. If you shall have answered the last question in the affirmative, please state why it was that in the case of the "Duc D'Aumale" this was not done.

9. Please state, in detail, the extent of your experience in surveying and examining the hulls and bottoms of iron or steel vessels.

10. Assume that the "Duc D'Aumale's" carrying space capacity was not exhausted, and that she carried proportionately less of each of the same classes of cargo; how would you say in each instance, on the assumption of the reductions undernoted, that the said ship should be stowed:

A. If the quantity of each class of cargo carried was reduced (on a basis of weight) two and one-half per cent?

B. If the quantity of each class of cargo carried was reduced (on a basis of weight) five per cent?

C. If the quantity of each class of cargo carried was reduced (on a basis of weight) seven and one-half per cent?

D. If the quantity of each class of cargo carried

was reduced (on a basis of weight) ten per cent?

E. If the quantity of each class of cargo carried was reduced (on a basis of weight) fifteen per cent?

F. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty per cent?

G. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty-five per cent?

11. State whether or not it would have been possible to have stowed the "Duc D'Aumale" in a seaworthy manner had her cargo consisted of a greater proportion of pig iron and a less proportion of coke and at the same time the carrying space of the vessel being completely occupied by the cargo carried. If so, please state how many more tons of pig iron and how many less tons of coke could have been carried, and, under such circumstances, how should the vessel have been stowed. In your answer describe the method of stowage of such cargo on such vessel in each instance where the weight of pig iron which was in fact carried by the "Duc D'Aumale" is increased cumulatively by lots of fifty tons.

12. State whether or not it would have been possible to have stowed the "Duc D'Aumale" in a seaworthy manner had her cargo consisted of a greater proportion of coke and a less proportion of pig iron and at the same time the carrying space of the vessel being completely occupied by the cargo carried. If so, how many more tons of coke and how many less tons of pig iron could have been carried, and, under such circumstances, how should the vessel have been

stowed? In your answer describe the method of stowage that would be applicable to such cargo of such vessel in each case where the weight of coke carried more than what the "Duc D'Aumale" did actually carry is increased by lots of fifty tons.

13. Can you, when you are thoroughly familiar with a vessel, determine in advance the best manner of stowing a vessel in reference to specific quantities and kinds of cargo that it is contemplated the vessel should carry?

14. If you answer the last question in the affirmative, will you please explain why it ever becomes necessary or proper to withhold a parcel of the cargo, as in the case of the "Duc D'Aumale" some sixty tons, for the purpose of trimming the vessel?

15. If, in answer to the direct interrogatories, you have stated that you know the pumps of the "Duc D'Aumale" to have been efficient and sufficient at the time of the vessel's departure from Rotterdam in September, 1907, please state what examination was personally made by you as to the sufficiency and efficiency of the pumps, stating particularly any tests that were made by you of said pumps and the names of all persons present thereat, giving the details of such tests?

(Title of Court and Cause and Number.)

Answers to Interrogatories by A. Van Veen.

Answers to interrogatories propounded to A. Van Veen, a witness in the above-entitled action, residing at Rotterdam, taken by Mr. C. A. van Renterghem.

Said witness, being first duly sworn, on oath deposes and says:

In answer to the first interrogatory: Aart Van Veen; age, 46 years; inspector for the Bureau Veritas for the Rotterdam District.

To the 2d: I have been surveyor to the Bureau Veritas, both ship and engineer, for 16 years and 10 years inspector. I studied engineering and naval architecture at the Technical University of Delft and subsequently was for 2 years with the Fairfield Ship Building Co., and after that for some years I was marine superintendent at Rotterdam of various steamship companies, for instance, the Holland American Line.

To the 3d: As surveyor to the Bureau Veritas I have been for the past 16 years constantly engaged in surveying and examining the hull and the equipment of sailing vessels, both of wood and iron. A very large number of sailing vessels are classed with The Bureau Veritas, but I have not done much surveying of stowage of cargoes of late years.

To the 4th: I thoroughly examined and surveyed the hull of the "Duc d'Aumale" in drydock at Rotterdam on the 6th September, 1907, for classification purposes.

To the 5th: Yes. [79]

To the 6th: I examined the whole of the hull of the vessel and in particular the bottom with all butts, seams, and rivets and the rudder. I found the whole after-hull in excellent condition with exception that I found 2 rivets corroded and these were renewed and the rudder rebushed. The bottom of the ship was cleaned and painted. I made the examination

on the 6th September, 1907, but I do not remember on what day I signed the certificate, but it was in the month of September, 1907, after holding the survey.

To the 7th: On the day I signed the certificate the "Duc d'Aumale" was seaworthy in every respect. I did not see her on the day of leaving Rotterdam in September, 1907, but unless some casualty happened to the vessel after I saw her, she must have been seaworthy then.

To the 8th: I do not know anything of the stowage of the vessel.

To the 9th: I know that this method of stowing was and still is the usual method of stowing vessels of the type of the "Duc d'Aumale," with such a cargo. Mr. A. A. Hoogerwerff, who stowed the "Duc d'Aumale," has had a very large experience of stowing such cargoes in similar vessels, and I am sure that he would not stow such a cargo improperly.

To the 10th: I refer to my answer to the 9th.

To the 11th, 12th and 13th: I have not the information required to make the necessary calculations.

To the 14th and 15th: No. [80]

Cross-interrogatories.

To the 1st: I do not know the cubic capacity of the between-decks and the lower hold of the "Duc d'Aumale" now.

To the 2d: The "Duc d'Aumale" was lying in a drydock of the Rotterdam Dry Dock Company when I examined the "Duc d'Aumale. I did the whole examination and survey personally on the 6th of September, 1907, in presence of Mr. Plisson, a representative of the owners, and Mr. Van den Berg, assist-

ant manager of the drydock company.

To the 3d: I examined the rivets in the hull and bottom by going along the ship and under the bottom, and it is quite easy to see whether the rivets are sound or not.

To the 4th: I do not know this.

To the 5th and 6th: I do not recognize any such universal rule. The stowage must depend in each case on the nature of the cargo, the beam of the vessel, the rigging and other similar circumstances.

To the 7th and 8th: I have not sufficient particulars of the "Duc d'Aumale" to answer this question, to stow the pig iron further forward would alter the trim of the vessel considerably.

To the 9th: As surveyor for the Bureau of Veritas, it has been my daily occupation for the past 16 years to survey and examine hulls and bottoms of iron and steel vessels.

To the 10th, 11th, 12th, 13th and 14; I have not the particulars necessary to answer these questions, but I [81] know that it is the usual practice in stowing such a cargo at Rotterdam to retain a parcel of the heavy cargo for the purpose of trimming the vessel, and in my opinion this is a proper thing to do.

To the 15th I cannot answer.

w. s.—A. VAN VEEN. [82]

(Title of Court, and Cause, and Number.)

Interrogatories to be Propounded to — **Hagendyk, Foreman of the Firm of Rotterdamsche Droogdok Maatschappij, at Rotterdam, Holland, and Any Officer or Foreman of Said Company Who may be Called as a Witness Before the Commissioner on Behalf of Compagnie Maritime Francaise and French Barque "Duc d'Aumale."**

1. What is your full name, age, and occupation?
2. How long have you been engaged in such occupation, in general, and in particular for the Rotterdamsche Droogdok Maatschappij?
3. Please state whether or not, to your knowledge, the French Barque "Duc d'Aumale" was in drydock in Rotterdam in or about September, 1907.
4. If your answer to the preceding question is that she was, please state, on what days she was in the drydock, and please state, also, in detail, what, if anything, was done by you, or under your personal supervision, on the hull, and in particular on the bottom of said vessel, in the way of examination of hull or bottom, and also in the way of repairs made thereon.
5. If any rivets were renewed while the ship was in drydock, describe the location of said rivets.
6. If you made a personal examination of her hull or bottom, or either thereof, state any detail of such examination tending to show the extent or thoroughness of such examination; also state, whether or not all the defects discovered by you were repaired within your knowledge.

7. State your opinion as to the navigability or seaworthiness of the "Duc d'Aumale" for a deep sea voyage, after all repairs made in your drydock had been completed.

Cross-interrogatories to be propounded to — Hagendyk, foreman of the firm of Rotterdamsche Droogdok Maatschappij, at Rotterdam, Holland, and any officer or manager of said company who may be called as a witness before the Commissioner on behalf of Compagnie Maritime Francaise.

1. If, in answer to the direct interrogatories, you shall have stated that something was done by you, or under your personal supervision, on the hull and on the bottom of the "Duc D'Aumale" in the way of examination in September, 1907, at Rotterdam, please state, in detail, the nature of the examination that was made.

2. Please state whether said examination was particularly directed to determining the condition of the rivets in the hull, particularly in the bottom of said vessel.

3. Please state what part was played by you personally in the matter of making such examination of the hull, particularly the bottom of said vessel.

4. Will you swear that you personally examined each rivet in the hull of the "Duc D'Aumale" and handled same?

5. State precisely what personal act or acts you performed as to each rivet examined by you, which constituted your examination of such rivet.

6. Is it not a fact that, as well before as since the making of repairs on the "Duc D'Aumale" in the

port of Rotterdam in September, 1907, you have frequently performed work for Compagnie Maritime Francaise on their vessels and that you regard said company as a customer of yours?

(Title of Court and Cause and Number.)

Answers to Interrogatories by J. van den Berg.

Answers to interrogatories propounded to J. H. v. d. Berg, a witness in the above-entitled action, residing at Rotterdam, taken by Mr. C. A. van Renterghem.

Said witness, being first duly sworn, on oath deposes and says:

In answer to the first interrogatory: Jan Hendrik van den Berg; 33 years old; Naval Architect, Assistant Manager of the Rotterdam Droogdok Maatschappij.

To the 2d: I have been engaged in this occupation about ten years and $4\frac{1}{2}$ by the Droogdok Maatschappij. I had learned this business at several of the biggest shipbuilding yards in Holland (f. i. Feyenoord, where *so* some dutch men-of-war have been built.)

To the 3d: Yes, I don't remember personally but I have seen it in the books.

To the 4th: I personally always examine all the vessels that come in the Droogdok Maatschappij. Because the "Duc d'Aumale" was there in September, 1907, according to the books I must have examined her myself. After the books the bottom and hull have been carefully examined also by my staff of workmen. All rivets suspected to be bad have been

marked and were tested afterwards; two of them were renewed, the rest proved to be sound. The vessel was also cleaned and repainted and the rudder lifted and the rudder-bushes renewed.

To the 5th: After the books two rivets were renewed in the bottom, but I could not see in what part of the bottom. [83]

To the 6th: As I have stated, according to the books I must have personally inspected the bottom and hull and marked all rivets and spots that were suspected to be bad. As the costs of repairs include a larger profit for our company than dock rent, we always inspect ships very accurately. All defects discovered must have been repaired, because this is always done.

To the 7th: As I have said already, I don't remember personally any more whether the "Duc d'Aumale" at the moment of her departure was seaworthy. As I examine all vessels personally as to the rivets, rudder, plates and the hull, the ship at the moment of her departure must have been seaworthy for a deep sea voyage as far as the hull is concerned. I do not know anything about navigability.

To the 8th, 9th, 10th, 11th, 12th, 13th 14th and 15th I cannot answer.

Cross-Interrogatories.

To the 1st: I refer my answers 4-6 of the direct interrogatories.

To the second: According to the books the examination was directed to determining the condition of the bottom hull, the rivets included, but not particularly to determining the condition of the rivets only.

To the 3d: I always personally examine the whole

bottom and hull and order my staff to test the rivets and spots, which I suspect to be bad. These rivets and spots are tested in the usual way, *a. e.*, by knocking with a hammer. [84]

To the 4th: No.

To the 5th: The condition of the rivets can be ascertained by looking at them; this I do always. I order my staff to test all of them which appear to be doubtful.

To the 6th: We probably have had vessels of said company before, because we have had in drydock vessels of nearly all shipping companies who have ships going to Rotterdam from time to time.

I cannot tell this with certainty, because I don't know at this moment whether the owners of the "Duc d'Aumale" have still more ships, but I will ascertain it from my books and write about this point to the commissioner under oath.

w. s.—J. H. v. d. BERG.

The letter of J. H. v. d. Berg meant in the answer to the 6th question; the diagram countersigned by me (Respondent's Exhibit 7), the certificate of classification No. 57,071 (Respondent's Exhibit 3), countersigned by me, and the Survey Report on Stowage (Respondent's Exhibit 2), also countersigned by me, are affixed here.

Rotterdam, 1st September, 1910.

Mr. C. A. v. RENTERGHEM.

[Endorsed]: Opened and filed Feby. 16th, 1911.
Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk.
[85]

(Title of Court and Cause, and Number.)

**Stipulation (Re Taking of Depositions of E. Plisson
et al.)**

It is hereby stipulated and agreed by and between the parties hereto and their respective proctors that the depositions of E. Plisson, C. Girard, D. Beaudry and E. Le Roy, all witnesses called on behalf of claimant, may be taken at the city of Nantes, in the Republic of France, before Ch. Ed., Simon, doyen, 33 Quai Fosse, Nantes, magistrate and sworn broker in said city, as commissioner, or such other person authorized to administer oaths as he may select for the office, without the issuance of a commission for the purpose, upon this stipulation, and upon the interrogatories, direct and cross, annexed hereto.

That said commissioner be authorized, if necessary, to appoint a competent interpreter and a stenographic reporter who shall take down and transcribe the answers to said interrogatories, direct and cross; and when said depositions are taken, the same shall be returned to the clerk of the above-entitled court, with the said commissioner's certificate thereto, in the form hereto attached.

When so taken and returned, said depositions may be offered and read in evidence, in the above-entitled case, and also in the case of Compagnie Maritime Francaise vs. The Cargo of the French Barque "Duc d'Aumale," No. 1395, subject to any objections thereto, except as to the form of the interrogatories or the method of taking said depositions.

It is further stipulated that Respondent's Exhibits

1 [86] and 7, being part of the depositions of Pierre Lalande, taken heretofore on behalf of the respondent in this case, may be annexed to the interrogatories and cross-interrogatories to be sent to the aforementioned commissioner, for the purpose of being used upon the taking of said depositions.

Dated San Francisco, California, July 28th, 1909.

PAGE, McCUTCHEON & KNIGHT,

Proctors for ——.

ANDROS & HENGSTLER,

Proctors for Claimant.

(Commissioner's Mark.)

(Here follows three (3) pages, written in the French language, which are omitted, pursuant to order of Court, dated June 14, 1917.) [87]

(Title of Court and Cause, and Number.)

Interrogatories to be Propounded to E. Plisson, at Nantes, France, on Behalf of Compagnie Maritime Francaise and French Barque "Duc d'Aumale."

1. What is your full name, age and occupation?
2. How long have you been engaged in this occupation?
3. Describe the extent and nature of your experience with sailing vessels, both of wood and iron, in particular with the surveying examination and stowage thereof, and more particularly with the stowage of cargoes of coke, and cargoes of pig iron, and mixed cargoes of coke and pig iron, or mixed cargoes of similar description stowed therein.

4. To what extent are you familiar with the French barque "Duc d'Aumale"?
5. Please give the dimensions and carrying capacity of the "Duc d'Aumale."
6. Please give a detailed description of the examination or examinations of the "Duc d'Aumale" made by you personally or at which you assisted, in August or September, 1907, while she was in the port of Rotterdam, with special reference to her structural seaworthiness and more particularly to the condition of her hull and bottom.
7. Please state what repairs, within your knowledge, were made on the hull, and particularly on the bottom of the vessel during August or September, 1907.
8. Please state your opinion, as to the structural seaworthiness of said vessel when she left the port of Rotterdam in September, 1907; and give the reasons for your opinion. [88]
9. What, if anything, had you to do with the stowing of the cargo of said vessel at Rotterdam, in September, 1907?
10. Please inspect Respondent's Exhibit 7 and state if it gives a correct representation of the stowage of the vessel. State who prepared said plan and state anything within your knowledge in explanation or correction of said plan. Give dimensions of piles of pig iron and distances from hatches.
11. Please state in detail what personal care or supervision, if any, you gave to the work of stowing said cargo.
12. Please state your opinion as to the propriety

and efficiency of the stowage of said vessel, as it was actually made, and give the reasons for your opinion.

13. If the stowage of the vessel, as it was when she left Rotterdam in September, 1907, had been modified in the following respect, viz., the 600 tons of pig iron in the lower hold had been distributed over the lower hold as follows: One pile in the fore part of the after-hatch, about 350 tons; another pile in the after part of the after hatch, and a small pile abaft of the fore-mast; but otherwise the stowage of the cargo had been the same; would this modification of the stowage, in your opinion, have been more efficient, or less efficient than the method used when the vessel left Rotterdam in September, 1907?

14. Give your reasons for your opinion as expressed in answer to question 13.

15. Would it have been desirable, in the case of this vessel and this cargo, to have spread the 660 tons of pig iron in the lower hold of the vessel over a larger ground space of said hold?

16. Give your reasons for your opinions as expressed in answer to question 15. [89]

17. Please state why, in the stowage of the cargo of this vessel, the weights carried in the between-decks and in the lower hold, were distributed as they actually were?

18. Was the distribution of the weights, actually made, in accordance with the rules of good stowage?

19. State reasons for answer to question 18.

20. Please compare the effect of the distribution of the cargo of the "Duc d'Aumale," when she left Rotterdam on her voyage to San Francisco in Sep-

tember, 1907, with respect to straining of the hull, and the rolling and pitching of the vessel, with the effect which the spreading of the 600 tons in the lower hold over a larger area would have had in the same respects, and also with the effect which a different distribution of weights, as between-hold and between-decks would have had in the same respects.

21. Are you familiar with the type of pumps which was installed in the "Duc d'Aumale" at the time of her departure from Rotterdam in September, 1907?

22. If your answer to the preceding question be in the affirmative, please state all the facts within your knowledge, and also your opinion, and the reasons therefor, respecting the efficiency and sufficiency of said pumps; and, if you know, kindly state the condition of said pumps at the time of the vessel's departure from Rotterdam in September, 1907.

Cross-Interrogatories to be Propounded to E.

PLISSON.

1. If you have not already done so in answer to the direct interrogatories, will you please state whether it is not the fact that you are now an employee of Compagnie Maritime Francaise and were such employee at all time in August and September, 1907? [90]

2. If you shall answer the last question in the affirmative, please describe precisely your duties under such employment.

3. Please state the cubic capacity of the between-decks and the lower hold of the "Duc d'Aumale."

4. If in answer to the direct interrogatories, you shall have stated that you made an examination of

the "Duc D'Aumale" while she was at the port of Rotterdam in August or September, 1907, please state at what place or shipyard in the Port of Rotterdam you made such examination, and how far such examination or examinations were made personally by you; please state the exact dates thereof and the names of any and all persons who were present at the time with you; please give the names and addresses of all persons participating in such examination or doing any work on the hull or bottom of the "Duc D'Aumale" during said time.

5. State what was done by you personally to ascertain if the rivets in the hull and bottom of said ship were fast and in good condition.

6. In reference to the stowage of the "Duc D'Aumale" at Rotterdam in September, 1907, will you state whether or not the cargo carrying capacity of said vessel was completely filled when her loading was completed?

7. Do you not recognize a general rule in relation to the stowage of sailing vessels that two-thirds of weight of the cargo should be stowed in the lower hold and the remaining one-third of weight of cargo in the between-decks?

8. If you answer the last question in the affirmative, please account for the fact that this rule was not adhered to in the case of the stowage of the "Duc D'Aumale"?

9. In your judgment, would the stowage of the "Duc D'Aumale" have been better had the iron in the vessel been stowed slightly further forward than

it was, namely, at the point in the vessel where her beam is greatest? [91]

10. If you shall have answered the last question in the affirmative, please state why it was that in the case of the "Duc D'Aumale" this was not done.

11. Please state, in detail, the extent of your experience in surveying and examining the hulls and bottoms of iron or steel vessels.

12. Assume that the "Duc D'Aumale's" carrying space capacity was not exhausted, and that she carried proportionately less of each of the same classes of cargo; how would you say, in each instance, on the assumption of the reductions undernoted, that the said ship should be stowed:

A. If the quantity of each class of cargo carried was reduced (on a basis of weight) two and one-half per cent?

B. If the quantity of each class of cargo carried was reduced (on a basis of weight) five per cent?

C. If the quantity of each class of cargo carried was reduced (on a basis of weight) seven and one-half per cent?

D. If the quantity of each class of cargo carried was reduced (on a basis of weight) ten per cent?

E. If the quantity of each class of cargo carried was reduced (on a basis of weight) fifteen per cent?

F. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty per cent?

G. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty-five per cent?

13. State whether or not it would have been pos-

sible to have stowed the "Duc D'Aumale" in a seaworthy manner had her cargo consisted of a greater proportion of pig iron and a less proportion of coke and at the same time the carrying space of the vessel being completely occupied by the cargo carried? If so, [92] please state how many more tons of pig iron and how many less tons of coke could have been carried, and under such circumstances how should the vessel have been stowed? In your answer describe the method of stowage of such cargo on such vessel in each instance where the weight of pig iron which was in fact carried by the "Duc D'Aumale" is increased cumulatively by lots of fifty tons.

14. State whether or not it would have been possible to have stowed the "Duc D'Aumale" in a seaworthy manner had her cargo consisted of a greater proportion of coke and a less proportion of pig iron and at the same time the carrying space of the vessel being completely occupied by the cargo carried. If so, how many more tons of coke and how many less tons of pig iron could have been carried, and, under such circumstances, how should the vessel have been stowed? In your answer describe the method of stowage that should be applicable to such cargo of such vessel in each case where the weight of coke carried more than what the "Duc D'Aumale" did actually carry is increased by lots of fifty tons.

15. Can you, when you are thoroughly familiar with a vessel, determine in advance the best manner of stowing a vessel in reference to specific quantities and kinds of cargo that it is contemplated the vessel should carry?

16. If you answer the last question in the affirmative, will you please explain why it ever becomes necessary or proper to withhold a parcel of the cargo, as in the case of the "Duc D'Aumale" some sixty tons, for the purpose of trimming the vessel?

17. If in answer to the direct interrogatories you have stated that you know the pumps of the "Duc D'Aumale" to have been efficient and sufficient at the time of the vessel's departure from Rotterdam in September, 1907, please state what examination was [93] personally made by you as to the sufficiency and efficiency of the pumps, stating particularly any tests that were made by you of said pumps and the names of all persons present thereat, giving the details of such tests. [94]

(Title of Court and Cause, and Number.)

**Interrogatories to be Propounded to C. Girard, at
Nantes, France, on Behalf of Compagnie Maritime Francaise and French Barque "Duc d'Aumale."**

1. What is your full name, age and occupation?
2. How long have you been engaged in this occupation?
3. Describe the extent and nature of your experience with sailing vessels, both of wood and of iron, in particular with the surveying, examination and stowage thereof, and more particularly with the cargoes of coke and pig iron, or mixed cargoes of similar description stowed therein.

4. To what extent are you familiar with the French Barque "Duc d'Aumale?"

5. Please give a detailed description of the examination or examinations of the "Duc d'Aumale" made by you personally or at which you assisted, in August or September, 1907, while she was in the port of Rotterdam, with special reference to her structural seaworthiness and more particularly to the condition of her hull and bottom.

6. Please state what repairs, within your knowledge, were made on the hull, and particularly on the bottom of the vessel during August or September, 1907.

7. What, if anything, had you to do with the stowing of the cargo of said vessel at Rotterdam, in September, 1907?

8. Suppose said French barque "Duc d'Aumale," 83 meters long in the keel, and 12 meters beam, and of 1944 35/100 registered tons net, was loaded with 660 tons of pig iron and approximately 2015 [95] tons of coke, to be carried from Rotterdam around Cape Horn, to the port of San Francisco, filling the vessel's entire carrying space, in the following manner; 600 tons of pig iron was stowed in the lower hold over a space about 60 feet long and 30 feet wide, extending from the after part of the main hatch to the fore part of the after hatch; the remaining 60 tons were kept back till the last to trim the vessel and were finally stowed in the between-decks for that purpose; the whole remainder of the space in the hold and between-decks was filled with coke, as illustrated in the diagram marked "Respondent's Exhibit 7": What is your opinion as to the propriety and efficiency of said stowage in said vessel and what

is your opinion as to the seaworthiness of said vessel as far as concerns stowage?

9. Please state the reasons for your opinion.

10. If the stowage described in the preceding question had been modified in the following respect, viz: the 600 tons of pig iron in the lower hold had been distributed over the lower hold as follows: One pile in the fore part of after hatch, about 350 tons; another pile in the after part of the after hatch, and a small pile abaft of the foremast; but otherwise the stowage of the cargo had been the same: would this modification of the stowage in your opinion, have been more efficient, or less efficient than the method described in question 8?

11. Please state the reasons for your opinion contained in your answer to question 10.

12. Please describe the effect of the first, and the second, methods of stowage, respectively, upon the straining of the hull, and the rolling and pitching of the vessel.

13. Do you know the pumps installed in the "Duc d'Aumale"?

14. If you answer the preceding question in the affirmative, [96] state how the pumps compare with pumps used on vessels of the same type, and state your opinion as to the sufficiency and efficiency thereof.

15. Are you the person who, on behalf of the Compagnie Maritime Francaise, on August 27, 1907, signed the request, addressed to the French Consul at Rotterdam, to appoint two experts to proceed to a survey of seaworthiness of the "Duc d'Aumale,"

as shown in Respondent's Exhibit 1? Please read the exhibit and state whether it contains a correct copy of your said request.

16. Please state whether, within your knowledge, two experts, appointed by the French Consul at Rotterdam, surveyed the "Duc d'Aumale" at or soon after your request was made, and state the names of the two experts.

17. Please state what assistance, if any, you gave to the said two experts at the survey of said vessel.

Cross-interrogatories to be Propounded to C. GIRARD.

1. If you have not already done so in answer to the direct interrogatories, will you please state whether it is not the fact that you are now an employee of Compagnie Maritime Franeaise and were such employee at all time in August and September, 1907.

2. If you shall answer the last question in the affirmative, please describe precisely your duties under such employment.

3. Please state the cubic capacity of the between-decks and the lower hold of the "Duc d'Aumale"?

4. If in answer to the direct interrogatories you shall have stated that you made an examination of the "Duc d'Aumale" while she was at the port of Rotterdam in August or September, 1907, please state at what place or shipyard in the port of Rotterdam [97] you made such examination, and how far such examination or examinations were made by you personally; please state the exact dates thereof and the names of any and all persons who were pres-

ent at the time with you; please give the names and addresses of all persons participating in such examination or doing any work on the hull or bottom of the "Duc d'Aumale" during said time.

5. State what was done by you personally to ascertain if the rivets in the hull and bottom of said ship were fast and in good condition.

6. In reference to the stowage of the "Duc d'Aumale" at Rotterdam in September, 1907, will you state whether or not the cargo carrying capacity of said vessel was completely filled when her loading was completed.

7. Do you not recognize a general rule in relation to the stowage of sailing vessels that two-thirds of weight of the cargo should be stowed in the lower hold and the remaining one-third of weight of cargo in the between-decks?

8. If you answer the last question in the affirmative, please account for the fact that this rule was not adhered to in the case of the stowage of the "Duc d'Aumale."

9. In your judgment, would the stowage of the "Duc D'Aumale" have been better had the iron in the vessel been stowed slightly further forward than it was, namely, at the point in the vessel where her beam is greatest?

10. If you shall have answered the last question in the affirmative, please state why it was that in the case of the "Duc D'Aumale" this was not done.

11. Please state, in detail, the extent of your experience in surveying and examining the hulls and bottoms of iron or steel vessels?

12. Assume that the "Duc D'Aumale's" carrying space capacity was not exhausted, and that she carried proportionately less of each [98] of the same classes of cargo; how would you say in each instance, on the assumption of the reductions undernoted, that the said ship should be stowed:

- A. If the quantity of each class of cargo carried was reduced (on a basis of weight) two and one-half per cent?
 - B. If the quantity of each class of cargo carried was reduced (on a basis of weight) five per cent?
 - C. If the quantity of each class of cargo carried was reduced (on a basis of weight) seven and one-half per cent?
 - D. If the quantity of each class of cargo carried was reduced (on a basis of weight) ten per cent?
 - E. If the quantity of each class of cargo carried was reduced (on a basis of weight) fifteen per cent?
 - F. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty per cent?
 - G. If the quantity of each class of cargo carried was reduced (on a basis of weight) twenty-five per cent?
13. State whether or not it would have been possible to have stowed the "Duc D'Aumale" in a seaworthy manner had her cargo consisted of a greater proportion of pig iron and a less proportion of coke and at the same time the carrying space of the vessel being completely occupied by the cargo carried? If so, please state how many more tons of pig iron and how many less tons of coke could have been carried, and, under such circumstances, how

should the vessel have been stowed. In your answer describe the method of stowage of such cargo on such vessel in each instance where the weight of pig iron which was in fact carried by the "Duc D'Aumale" is increased cumulatively by lots of fifty tons.

14. State whether or not it would have been possible to have stowed the "Duc D'Aumale" in a seaworthy manner had her cargo [99] consisted of a greater proportion of coke and a less proportion of pig iron and at the same time the carrying space of the vessel being completely occupied by the cargo carried? If so, how many more tons of coke and how many less tons of pig iron could have been carried, and, under such circumstances, how should the vessel have been stowed? In your answer describe the method of stowage that would be applicable to such cargo of such vessel in each case where the weight of coke carried more than what the "Duc D'Aumale" did actually carry is increased by lots of fifty tons.

15. Can you, when you are thoroughly familiar with a vessel, determine in advance the best manner of stowing a vessel in reference to specific quantities and kinds of cargo that it is contemplated the vessel should carry?

16. If you answer the last question in the affirmative, will you please explain why it ever becomes necessary or proper to withhold a parcel of the cargo, as in the case of the "Duc D'Aumale" some sixty tons, for the purpose of trimming the vessel?

17. If, in answer to the direct interrogatories, you have stated that you know the pumps of the "Duc D'Aumale" to have been efficient and sufficient

at the time of the vessel's departure from Rotterdam in September, 1907, please state what examination was personally made by you as to the sufficiency and efficiency of the pumps, stating particularly any tests that were made by you of said pumps and the names of all persons present thereat, giving the details of such tests.

18. If, in answer to the 16th interrogatory, you shall have stated that two experts were appointed by the French Consul at Rotterdam to survey the "Duc D'Aumale" and who surveyed said vessel, please state what you know of the qualifications of said persons you call experts.

19. Please state, in detail, the extent of your experience in surveying and examining hulls and bottoms of iron or steel vessels. [100]

(Title of Court and Cause, and Number.)

**Interrogatories to be Propounded to Capt. D.
Beaudry, at Nantes, France, on Behalf of Com-
pagnie Maritime Francaise and French Barque
"Duc d'Aumale."**

1. What is your name, age and occupation?
2. How long have you been engaged in such occupation?
3. Please describe the nature and extent of your experience with deep sea vessels.
4. Please describe the extent of your experience in surveying vessels to seaworthiness.
5. Did you, in August or September, 1907, at the port of Rotterdam, Holland, go on board the French

barque "Duc d'Aumale"? If your answer be yes, state the occasion and purpose of your visit.

6. If your answer to the preceding question be that you went on board the French barque "Duc d'Aumale" at the request of the French Consul at Rotterdam, state in detail what was done by you while you were on board.

7. State when you *when you* went on board, and who was present and assisted upon that occasion.

8. If on that occasion, you made a survey of the "Duc d'Aumale," describe the details of the survey, and the particularity and degree of care with which your examination was made.

9. Please state the result of your examination, and the opinion which you formed after the examination with respect to the seaworthiness of the "Duc d'Aumale."

10. Are you the person who signed the Survey Report, a copy whereof is contained in Respondent's Exhibit 1? [101]

11. Please read the copy of the survey report contained in Respondent's Exhibit 1 and state whether it is a correct copy of the original report certified to by you on the subject of the seaworthiness of the "Duc d'Aumale."

Cross-interrogatories to be propounded to D.
BEAUDRY.

1. If, in answer to the direct interrogatories, you have stated, directly or in effect, that you have had experience in surveying vessels as to seaworthiness, please give the names of any and all vessels you have surveyed for this purpose, with the times and places

thereof, stating, in each case, whether such vessels were iron or wooden ships.

2. State whether or not on any such occasions you found and reported rivets in the hull or bottom of an iron vessel to be in bad condition, stating the name of the vessel in each case and the time and place where such survey was made.

3. If, in answer to the direct interrogatories, you shall have stated that you went on board the French bark "Duc D'Aumale" in August or September, 1907, at the port of Rotterdam, for the purpose of surveying the hull of said vessel as to seaworthiness, please state whether such vessel at said time was in drydock.

4. Please state, if at this or any other time you made a survey of the hull of the "Duc D'Aumale" precisely what was done by you personally to ascertain the condition of the rivets throughout the hull of said vessel.

5. Will you state under oath that you personally examined each rivet in the hull of the "Duc D'Aumale" and handled same?

6. State precisely what personal act or acts you performed as to each rivet examined by you and which constituted your examination of such rivet.

[102]

7. Please state whether or not you have had any experience in surveying the hulls of vessels other than such as is incidental to your occupation as a master or officer of ships, and, if so, the details of that experience. [103]

(Title of Court and Cause, and Number.)

**Interrogatories to be Propounded to Capt. E. Le Roy,
at Nantes, France, on Behalf of Compagnie
Maritime Francaise and French Barque "Duc
d'Aumale."**

1. What is your name, age and occupation?
2. How long have you been engaged in such occupation?
3. Please describe the nature and extent of your experience with deep sea vessels.
4. Please describe the extent of your experience in surveying vessels as to seaworthiness.
5. Did you, in August or September, 1907, at the port of Rotterdam, Holland, go on board the French barque "Duc d'Aumale"? If your answer be yes, state the occasion and purpose of your visit.
6. If your answer to the preceding question be that you went on board the French barque "Duc d'Aumale" at the request of the French Consul at Rotterdam, state in detail what was done by you while you were on board.
7. State when you went on board, and who was present and assisted upon that occasion.
8. If on that occasion, you made a survey of the "Duc d'Aumale," describe the details of the survey, and the particularity and degree of care with which your examination was made.
9. Please state the result of your examination, and the opinion which you formed after the examina-

tion with respect to the seaworthiness of the "Duc d'Aumale."

10. Are you the person who signed the Survey Report, a copy whereof is contained in Respondent's Exhibit 1? [104]

11. Please read the copy of the survey report contained in Respondent's Exhibit 1 and state whether it is a correct copy of the original report certified to by you on the subject of the seaworthiness of the "Duc d'Aumale."

Cross-interrogatories to be Propounded to E. LE ROY.

1. If, in answer to the direct interrogatories, you have stated, directly or in effect, that you have had experience in surveying vessels as to seaworthiness, please give the names of any and all vessels you have surveyed for this purpose, with the times and places thereof, stating, in each case, whether such vessels were iron or wooden ships.

2. State whether or not on any such occasions you found and reported rivets in the hull or bottom of an iron vessel to be in bad condition, stating the name of the vessel in each case and the time and place where such survey was made.

3. If, in answer to the direct interrogatories, you shall have stated that you went on board the French bark "Duc D'Aumale" in August or September, 1907, at the port of Rotterdam, for the purpose of surveying the hull of said vessel as to seaworthiness, please state whether such vessel at said time was in drydock.

4. Please state, if at this or any other time you

made a survey of the hull of the "Duc d'Aumale," precisely what was done by you personally to ascertain the condition of the rivets throughout the hull of said vessel.

5. Will you state under oath that you personally examined each rivet in the hull of the "Duc d'Aumale" and handled same?

6. State precisely what personal act or acts you performed as to each rivet examined by you and which constituted your examination [105] of such rivet.

7. Please state whether or not you have had any experience in surveying the hulls of vessels other than such as is incidental to your occupation as a master or officer of ships, and, if so, the details of that experience.

[Endorsed]: "Duc D'Aumale." French Interrogatories and Cross-interrogatories. William A. Crump & Son, 17 Leadenhall Street, London, E. C.

(Original stowage plan is transmitted herewith, in its original form, pursuant to stipulation and order of Court.) [106]

Translation of Certificate of Seaworthiness of "Duc d'Aumale."

REQUEST.

I beg to request the Consul of France at Rotterdam to kindly designate two experts to proceed to a survey of seaworthiness of the "Duc d'Aumale."

Rotterdam, Aug. 27/07.

Signed.

CONSULAR ORDINANCE.

We, Consul of France, at Rotterdam, have seen

the above request addressed to us for the purpose of designating two experts for the survey of the 3/m "Duc d'Aumale," and order as follows: Messrs. E. Le Roy and D. Beaudry, master mariners will proceed on board the said vessel for the purpose of holding above survey.

Rotterdam, Aug. 27/07.

Signed.

TAKING OATH.

Appeared before us Consul of France at Rotterdam the 27th day of August, 1907, Messrs. E. Leroy & D. Beaudry, Master mariners at Rotterdam, who have declared the acceptance of the appointment of surveyors for the seaworthiness of the 3/m "Duc d'Aumale" and to draw up a report of the result of their survey, and have promised under oath to proceed conscientiously with this survey.

In testimony whereof they have, after reading, signed with us, Consul above qualified, the day, month and year as above.

Signed. [107]

REPORT OF SURVEY.

We, undersigned, D. Beaudry, Master mariner, commanding the French ship "Jules Gommes" and Emile Le Roy, master mariner, commanding the French steamer "Niobe" certify having this day proceeded on board of the 3/m bark "Duc d'Aumale," filled out at Cardiff, Oct. 15/06, registering 1944-36/100 tons commanded by Benolt, master mariner.

In the presence of the said Captain and at his request, we proceeded with the survey of the interior and exterior of the vessel, and have found her to be

staunch, well rigged, provided with all her sails, ropes, anchors, chains, pumps and boats, provided with all articles and spare stores required by the rules, and in a perfectly seaworthy condition.

In consequence whereof we declare that the "Duc d'Aumale" can proceed to deep sea navigation in perfect security.

In testimony whereof we have signed the present report to be deposited at the Consulate of France, for whom it may concern.

Drawn up at Rotterdam Aug 27/07.

Signed.

(Rubber Stamp.) [108]

(Title of Court and Cause, and Number.)

**Commissioner's Certificate to Depositions of E.
Plisson et al.**

To All to Whom These Presents Shall or May Come:

I, Charles Ed. Simon, named in the attached stipulation as commissioner to take the depositions of the within named E. Plisson, C. Girard, D. Beaudry and E. Le Roy, upon interrogatories, direct and cross, attached to said stipulation, do hereby certify that, pursuant to said stipulation, the said witness E. Plisson, named therein, appeared before me on the seventh day of October, 1910; that said witness C. Girard, named therein, appeared before me on the seventh day of October, 1910; that said witness D. Beaudry, named therein, appeared before me on the first day of October, 1910, and that said witness, E. Le Roy, named therein appeared before me on the ninth day of February, 1910; that upon the days

mentioned, after administering oath, I took and completed the answers or deposition to said interrogatories and cross-interrogatories of each one of the said witnesses, said answers or deposition being hereunto annexed. Which said answers or deposition were taken down by a competent stenographic reporter designated by me therefor, and previously sworn to correctly take and transcribe such answers or deposition.

And I further certify that, previous to taking the said answer or deposition, I duly administered to each of said witnesses the following oath:

“You swear true answers to make to all such questions as shall be asked you upon these interrogatories and cross-interrogatories, without fear of, or favor to, either party hereto, and therein you swear to speak the truth, the whole truth, and nothing but the truth, so help you God.” [109]

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal at Nantes, France, this seventeenth day of December, 1910.

CHARLES ED. SIMON.

(Commissioner’s Stamp.) [110]

(Title of Court and Cause, and Number.)

(13,959.)

**Answers to the Interrogatories by Captain Plisson,
of Trentemoult, on Behalf of the Compagnie
Maritime Francaise, for the French Three-masts
“Duc d’Aumale.”**

Answers to interrogatories propounded to Captain

PLISSON, a witness in the above-entitled action, residing at Trentemoult, near Nantes, taken by the Commissioner.

Said Captain Plisson, being first duly sworn, on oath deposes and says:

In answer to the first interrogatory:

1. Ernest Plisson; fifty-nine years old; captain for the world trade, former surveyor of the Nantes Tribunal of Commerce, acting actually as out-fitting captain.

In answer to the second interrogatory:

2. I am overlooker since 1899.

In answer to the third interrogatory:

3. I am a commissioned captain for the world trade since 1875.

I have commanded the wood sailing vessels since that time without cessation until 1881 when I took the command of the steel steamer until 1895.

Since 1895 until 1899, I have often been appointed as a surveyor by the Sea Underwriters and the Tribunal of Commerce, for the purpose of examining hulls, masts and cargoes of various sailing ships as well wood as iron or steel built. Since 1899, I am the overlooker of the Compagnie Maritime Francaise owning actually thirteen steel vessels. I have always inspected her ships on their returning to Europe where they came to deliver their cargoes and load again; this examination bore particularly on the surveys in drydock and stowage of the cargoes; very often, those cargoes were made of coke, pig iron or similar cargoes, what has given me a great experience with that kind of cargo. [111]

In answer to the fourth interrogatory:

4. I have surveyed the building of the "Duc d'Aumale" so as of all the other vessels belonging the Compagnie Maritime Francaise and I have followed her returns to Europe; every time I examined her in drydock and inspected the stowage of her cargoes.

In answer to the fifth interrogatory:

5. Length between perpendicular lines about seventy-nine meters sixty centimeters.

Main-beam breadth, twelve meters forty centimeters.

Moulded depth at the superior bottom, seven meters twenty-nine centimeters.

Between-decks height, two meters forty centimeters.

She carries about three thousand tons.

In answer to the sixth interrogatory:

6. During the stay of the "Duc d'Aumale" at Rotterdam, I have attentively examined all her parts during three days, from fourth to sixth September, as well afloat as in drydock, in company of Mr. Girard.

The internal survey of the hold did not let me discover anything wrong.

The frames, bracket plates, beams, floors plates, and cement at the bottom of the hold as well as the inside riveting were in a perfect state.

In drydock, where a special survey of the little bottom was passed by the Mr. Van Veen, Veritas Agent, Mr. Girard, a drydock foreman, and me, we found two defective rivets, which were at once renewed; some butts were joined with mastich; the re-

mainder of the hull, riveting, butts, was in a perfect state.

Besides, the rudder was inspected and lifted for the survey of the rudder braces and pintles. [112]

Several rudder rivets have been equally renewed.

I wrote the sixth and the seventh September, 1907, to the Compagnie Maritime Francaise for giving them all particulars of my survey. I show these two letters.

In answer to the seventh interrogatory:

7. I have just said under No. Six that two rivets were changed, a few butts joined with mastichs and the rudder repaired.

In answer to the eighth interrogatory:

8. In my opinion, having surveyed the building of the "Duc d'Aumale" and inspected her several times, I dare assert that said building was perfect and in a good keeping state on departure from Rotterdam in September, 1907.

In answer to the ninth interrogatory:

9. I have surveyed in agreement with the surveyor, the stowing of the cargo.

In answer to the tenth interrogatory:

10. The stowage plan was correct, prepared by the stevedore, but he made a mistake in writing two hundred and seventy tons in the little pig iron parcel astern; in fact, this made only seventy tons. I shall add that the height of the pile stowed in the hold is not in accordance with the scale.

The "Duc d'Aumale" had in the hold six hundred tons pig iron, whereof first tier were stowed in the greatest strength of the vessel and the greatest

breadth, that is to say, by midship beam, which is situated just under the back coaming of the main hatch.

The six hundred tons thus shipped were stowed in piles and without interruption on a length of sixty English feet, included between the main and astern hatches every piles had a mean height of about one meter ten centimeters. Sixty tons pig iron were also put in the 'tween-deck, then the remainder of hold and 'tween-deck entirely filled up with coke. [113]

In answer to the eleventh interrogatory:

11. I was on board the "Duc d'Aumale" when the pig iron was shipped and there remained only to *pill* up the hold with coke; besides, I affirm that Captain Girard had all my instructions to survey the stowage when I was away from board.

In answer to the twelfth interrogatory:

12. The stowage, as it was actually made, has allowed the vessel, after and of her loading, to be in sheer, an indispensable condition to assure her good seaworthiness.

Besides, the six hundred tons pig iron placed where they have *put*, *were* in the most resisting part of the ship.

What concerns the stowage of a sailing ship, the order of the goods in the hold varies according to her building, her shapes and the voyage which has to be undertaken.

However as a rule, a sailing vessel loading a full general cargo must stow in the hold a little over the two-thirds of her cargo and the remainder in the 'tween-deck.

For instance, a vessel of three thousand tons; d. w. will load in the hold from two thousand one hundred to two thousand two hundred and fifty tons or there abouts and in the 'tween-deck about seven hundred fifty to nine hundred tons.

But this rule is not an absolute one, as all depends upon the more or less sharp shapes of the ship to be loaded.

As for the coke cargo, it's impossible for whatever ship to take her complete cargo without having beforehand shipped and stowed in the bottom of the hold a certain quantity of ballast, sand, iron, pig iron or any other heavy goods to lower sufficiently the gravity center; without this cautious measure a ship would be innavigable. The number of tons in weight to be shipped varies according to the ship's shapes.

[114]

In answer to the thirteenth interrogatory:

13. Had the stowage of the 600 tons pig iron been effected as indicated by this interrogatory, it would have been defective.

In answer to the fourteenth interrogatory:

14. Because the shifting of part of the pig iron near the foremast would contrive in order to keep the sheer, to carry back a more important parcel pig iron quite astern, in the breech-moulding, which is the weakest part of the vessel. The straining would then be irregular and with bad weathers, the risks of damages to the hull would be much more to be feared.

In answer to the fifteenth interrogatory:

15. No.

In answer to the sixteenth interrogatory:

16. By distributing the 600 tons on a larger ground space, the height of the pig iron would have been less and consequently the gravity center too much lowered.

So by dividing this pig iron on a larger ground space, it would have been necessary, to keep the regular sheer, to shift a certain quantity of pig iron for stowing ahead of the first piles and also astern of the last ones.

In this last case and as I already said before the stern would have sustained an extraordinary straining and the rolling shocks, owing to the fall of the gravity center, would have been too violent, a partial or total dismasting being the possible consequence.

In answer to the seventeenth interrogatory:

17. The weight of the cargo in the lower hold and the between-deck was distributed thus for avoiding first a too heavy straining, weakening the blunt rolling strokes and at the same time, to give the ship a good stability and, in this way, to secure a perfect seaworthiness. [115]

In answer to the eighteenth interrogatory:

18. Yes.

In answer to the nineteenth interrogatory:

19. The division was made in accordance with the good stowing and right sense rules concerning our ships which are all built on the same shapes. *Owing their* fine lines, they can't, being empty, stand up without having in the hold a minimum dead weight of three hundred tons.

In these conditions, when the vessels are loaded

with a similar cargo to the "Duc d'Aumale" one, you can't leave in the hold less than 600 tons pig iron to give them good stability with a full cargo of coke or other like goods.

There is indeed no rule concerning the stowage, and the good sense and judgment of the captain acquainted with his ship have to provide by the division of the goods in the holds, for good seaworthy conditions.

For instance, two ships of same d. w. taking a similar cargo, may have a very important difference in their weight division.

A very broad vessel having by shapes and consequently able to stand up without ballast will have to put more weight in the 'tween-deck than another ship which would be less broad and whose shapes would be finer.

In answer to the twentieth interrogatory:

20. The comparison to establish between these two different stowing plans with regard to the qualities of a ship is quite simple.

First, with the stowage made at Rotterdam on board the "Duc d'Aumale," you may easily see that all cautions have been taken to give her a good seaworthy condition.

As I already said in the twelfth interrogatory, the six hundred tons have been put in the strongest part of the hold and the [116] stowage has been made by piles touching each other, with a mean height of about one meter ten centimeters per pile.

By so acting and after having completed the cargo with coke, you arrive to a regular sheer, the pitching,

owing to the light cargo stowed ahead was softened, and as I said before owing to the normal height of the gravity center, the rolling shocks, instead of being too rough, ought to be relatively slow.

On the contrary, by distributing the six hundred tons on a larger area in the hold, you lower the gravity center; on the other side, to keep the sheer after end loading, and to compensate the quantity pig iron which would have been put towards the fore part, it would have been necessary to stow about the after-part a quantity in the weakest part of the hold.

With such an arrangement it might have happened that the pig iron stowed ahead would have caused said vessel strong pitching and possibly a dismasting; for the same reason, the pig iron being stowed astern which is, as already said, the weakest part of the ship, could have occasioned an extraordinary straining.

In every manner, it was not possible to modify the distribution of the weights between hold and 'tween-deck.

In answer to the twenty-first interrogatory:

21. Yes.

In answer to the twenty-second interrogatory:

22. The "Duc d'Aumale" was provided with two double acting pumps, placed on deck, astern of the main mast and moved either by strength of arms or by help of the steam winch; they were supplied by the firm Babin-Chevaye Freres, of Nantes.

The adduction pipes measure one hundred eighty millimeters, so that the pumps of the "Duc d'Aumale" were about one third superior to the

Veritas Register's reglementar one. [117]

The regulations of the various classification registers stipulate:

Bureau Veritas, two pumps of 125 millimeters.

Lloyd's Register, two pumps of 125 millimeters.

Germanischer Lloyd, two pumps of 102 millimeters.

American Record, two pumps of 125 millimeters.

Consequently the "Duc d'Aumale" was supplied with pumps of an exceptional power.

During my stay at Rotterdam and besides the inspection and trials undertaken by the experts appointed by the French Consul, I have examined, after taking to pieces, all pieces which I acknowledged to be in perfect state; I shall add that, in our company, we had at the beginning sixteen vessels provided with similar pumps and never have we had the least trouble concerning said pumps.

(Commissioner's Stamp.) [118]

(Title of Court and Cause, and Number.)

Answers to Cross-interrogatories by Captain Plisson.

Answers to cross-interrogatories propounded to Mr. Plisson, a witness in the above-entitled action, residing at Trentemoult near Nantes, taken by me, Commissioner.

Said Captain Plisson, in answer to the first cross-interrogatory, says:

1. Yes, I am the inspector of the Compagnie Maritime Francaise since 1899.

Second cross-interrogatory:

2. My duties are:

1. To survey the building and out-fitting of our ships.
2. By every return to Europe, to survey them minutely afloat and in drydock, to undertake the repairs if any wanted, and to follow the stowage of all goods shipped on our vessels.

Third cross-interrogatory:

3. Lower hold, about 3,360 cubic meters.

Between-decks about 1,640 cubic meters.

Fourth cross-interrogatory:

4. A first examination was made by me on the dates of 4th and 5th September when the vessel was afloat.

I made the second inspection on drydock, the 5th and 6th September, at Rotterdamsche Droogdock Maatschappij Ltd.'s shipyard, which undertook the repairs; the ship entered in drydock the 5th September, at 3 P. M.

I was accompanied in my second visit by the following named persons: Mr. A. Van Veen, Bureau Veritas Rotterdam Agent, Mr. Girard, licensed captain for the world trade of Nantes, the foreman of aforesaid shipyard, whose name I don't know.

[119]

Fifth cross-interrogatory:

5. As I previously said, I have personally and thoroughly examined all small bottom, keel, plates and butts rivets.

Two rivets which we ascertained to be defective have been renewed and several butts puttied; the remainder of the hull was in perfect state.

Sixth cross-interrogatory:

6. The hold was completely filled with 2,675 tons pig iron and coke, whilst the cargo carrying capacity of the vessel is about three thousand tons.

Seventh cross-interrogatory:

7. No.

Eighth cross-interrogatory:

8. I have nothing to answer as I negatively replied to the previous question.

Ninth cross-interrogatory:

9. No, if the six hundred tons pig iron had been stowed more forward, the sixty tons pig iron in the between-decks, even put quite astern, would have been insufficient to poise the vessel which would have fallen *an* the head and not been seaworthy.

Tenth cross-interrogatory:

10. I have nothing to answer.

Eleventh cross-interrogatory:

11. Since 1881 when I have been the master of iron ships, I have continually examined, as a surveyor, the hulls of iron and steel vessels. I dare therefore certify that my experiment is absolutely completed concerning those ships.

Twelfth cross-interrogatory:

12. I don't understand quite well this question and it's difficult for me to answer to same. [120]

Thirteenth cross-interrogatory:

13. The "Duc d'Aumale" could have taken three hundred tons pig iron more to reach about her d. w., but on the other side the quantity of coke would have been diminished by about forty tons.

For three hundred tons pig iron besides the six

hundred and sixty shipped tons and considering the density of that stuff two hundred to two hundred and ten tons would have been stowed in the hold and ninety to one hundred tons in the 'tween-deck.

Fourteenth cross-interrogatory:

14. What concerns the "Duc d'Aumale" and as already said, six hundred tons pig iron are necessary for her stability and good seaworthy conditions, considering the vessel to complete her cargo with coke.

By suppressing the sixty tons pig iron stowed in the between-decks, this would simply have allowed to ship seven to eight tons coke more.

Fifteenth cross-interrogatory:

15. Approximately, yes, exactly, no.

This is the reason why you always reserve for the end of the loading a small parcel goods to trim the vessel at the last moment.

Sixteenth cross-interrogatory:

16. I already answered this question in my previous reply.

Seventeenth cross-interrogatory:

17. I personally unshipped both pumps and tested after so doing all pieces which I found in perfect state.

QUESTION.—Have you anything to add concerning the case which is the motive of these interrogatories and cross-interrogatories?

ANSWER.—I have nothing more to declare.

Sworn to at Nantes, France, the seventh day of October, 1910, before me.

(Commissioner's Stamp)

Signed: E. PLISSON.

CHARLES ED SIMON. [121]

(Title of Court and Cause, and Number.)

**Answers to Interrogatories by Captain Girard, of
Trentemoult near Nantes, on Behalf of the
Compagnie Maritime Francaise, for the French
Three-masts “Duc d’Aumale.”**

Answers to interrogatories propounded to Captain GIRARD, a witness in the above-entitled action, residing at Trentemoult, near Nantes, taken by the Commissioner.

Said Captain Girard, being first duly sworn, on oath deposes and says:

In answer to the first interrogatory:

1. Girard, Constant Denis, captain for the world trade; former outfitting captain in the Compagnie des Voiliers Havrais. I am sixty-two years of age.

In answer to the second interrogatory:

2. During seven years and a half, until July, 1909.

In answer to the third interrogatory:

3. I have commanded numerous sailing vessels, so well wood as steel built, in my quality of overseer. I have often examined hulls of sailing vessels and surveyed the stowage of their cargoes, but, except the “Duc D’Aumale,” I have not had opportunity survey cargoes consisting in pig iron and coke.

In answer to the fourth interrogatory:

4. I don’t know specially the “Duc D’Aumale”; I have been sent to Rotterdam in order to assist Mr. Plisson.

In answer to the fifth interrogatory:

5. I have examined the “Duc D’Aumale” with

the greatest attention in all her parts; I found her in perfect state except some defects in the hull and rudder which have been repaired in drydock.

[122]

In answer to the sixth interrogatory:

6. The hull has been inspected in drydock with the greatest care; two defective rivets have been renewed and butts were filled with putty. The rudder has been inspected; some rivets were replaced and pintles and braces were readjusted. The seventh September, 1907, I wrote Mr. Polo, manager the Compagnie Maritime Francaise, giving him all particulars and I join said letter to the file.

In answer to the seventh interrogatory:

7. I have but followed and executed the instructions of the surveyor who has followed the loading, and of Mr. Plisson, the company's overlooker. My opinion was besides in accordance with their own one.

In answer to the eighth interrogatory:

8. According to my opinion, the stowage has been made as it might to be.

In answer to the ninth interrogatory.

9. Because stowed as she was, the vessel was thus in perfect seaworthiness.

In answer to the tenth interrogatory:

10. My opinion is that this way of doing might to have given less security than the method which has been used.

In answer to the eleventh interrogatory:

11. Because the vessel would thus have strained

to the excess in various parts and specially at the extreme stern.

In answer to the twelfth interrogatory:

12. I believe that the rolling would have been sensibly the same in both cases but the pitching would have been infinitely harder if the pig iron had been stowed in three parcels and the ship would have strained much more.

In answer to the thirteenth interrogatory:

13. Yes. [123]

In answer to the fourteenth interrogatory:

14. They are alike the ones of the most part of vessels having same tonnage, and, in my opinion, are very sufficient.

In answer to the fifteenth interrogatory:

15. Yes, in answer to both questions.

In answer to the sixteenth interrogatory:

16. Two experts, Messrs. Beaudry and Le Roy, have been appointed, at my request by the French Consul at Rotterdam; they have afterwards fulfilled their duty.

In answer to the seventeenth interrogatory:

17. I accompanied the experts in their survey and gave them all assistance they were in want of.

(Commissioner's Stamp.) [124]

(Title of Court and Cause, and Number.)

Answers to Cross-interrogatories by Captain Girard.

Answers to cross-interrogatories propounded to Mr. GIRARD, a witness in the above-entitled action, residing at Trentemount near Nantes, taken by me, Commissioner.

Said Captain GIRARD, in answer to the first cross-interrogatory, says:

1. I am not a employee of the Compagnie Maritime Francaise; I had simply a temporary mandamus to inspect at Rotterdam the "Duc d'Aumale."

Second cross-interrogatory:

2. My duties were to watch the discharging, loading and out-fitting of the vessel.

Third cross-interrogatory:

3. I don't know it.

Fourth cross-interrogatory:

4. I have accompanied in the examination of the ship in drydock Messrs. Plisson, Van Veen, Bureau Veritas Rotterdam agent, and the foreman of the Rotterdamsche Droogdok Maatschappij Ltd. I have examined the "Duc d'Aumale" during my stay at Rotterdam and specially the 4th, 5th, and 6th, September, afloat and in drydock. The works have been made by the Rotterdamsche Droogdock Maatschappij, already mentioned.

Fifth cross-interrogatory:

5. After a very particular examination, specially of the rivets, I only saw to be made the repairs mentioned in the sixth interrogatory the remainder being in a perfect state.

Sixth cross-interrogatory:

6. Yes. [125]

Seventh cross-interrogatory:

7. There is no absolute rule; all depends upon the vessel's shapes.

Eighth cross-interrogatory:

8. I have not to answer because in my opinion,

there is no absolute rule.

Ninth cross-interrogatory:

9. I consider that the best place has been choosed to stow the pig iron.

Tenth cross-interrogatory:

10. I have nothing to answer owing to my precedent reply.

Eleventh cross-interrogatory:

11. I am a captain licensed for the world trade since thirty-eight years and have fulfilled the office of overlooker since seven and a half years in the service of the Compagnie des Voiliers Havrais, at Havre. I have had repeated occasions to examine the hulls of the iron and steel ships, as a surveyor.

Twelfth cross-interrogatory:

12. It's not possible for me to answer positively to this question; I should have to make complex and difficult calculations.

Thirteenth cross-interrogatory:

13. In my opinion, the vessel being equally filled in this case, could have taken about two or three hundred tons of pig iron more and a little less coke, remaining, however, in a seaworthy manner.

Fourteenth cross-interrogatory:

14. It was impossible for the "Duc d'Aumale" to sail in security without having at least six hundred tons pig iron in the hold.

Fifteenth cross-interrogatory:

15. It is difficult to do it surely; all depends upon the ship's shapes and her nautical capacities. [126]

Sixteenth cross-interrogatory:

16. I have nothing to answer, my previous reply not being peremptory.

Seventeenth cross-interrogatory:

17. The examination was thoroughly made in my presence by Messrs. Beaudry and Le Roy, surveyors.

Eighteenth cross-interrogatory:

18. Messrs. Beaudry and Le Roy, Captains, appointed as experts by the Consul, had certainly the requested qualifications to accomplish worthily their duty.

Nineteenth cross-interrogatory:

19. I have answered to this question under number eleven of the cross-interrogatory.

QUESTION.—Have you anything to add concerning the case which is the motive of these interrogatories and cross-interrogatories?

ANSWER. I have nothing more to declare.

Sworn to and at Nantes, France, the seventh day of October, 1910, before me.

Signed: C. GIRARD.

CHARLES ED SIMON.

(Commissioner's Stamp.) [127]

(Title of Court and Cause, and Number.)

Answers to Interrogatories Propounded to Captain Beaudry, a Witness in the Above-entitled Action, Residing at Granville, Taken by the Commissioner.

Said Captain BEAUDRY, being first duly sworn, on oath deposes and says:

In answer to the first interrogatory:

1. Beaudry, captain for the world trade; over-

looker of the Societe Bayonnaise de Navigation; thirty-nine years old.

In answer to the second interrogatory:

2. Since four years.

In answer to the third interrogatory:

3. I navigated during 24 years on board sailing vessels and am consequently well acquainted with deep sea vessels which I commanded in ten years.

In answer to the fourth interrogatory:

4. I made numerous surveys, especially the "Germaine" and the "Charles Gounod" at Hull in 1904, the "Valparaiso" at Cardiff in 1907, the "La Perouse" at Antwerp in 1909, all these ships being steel built, and a quantity of other ones.

In answer to the fifth interrogatory:

5. Yes, I was at Rotterdam in August and September, 1907, surveying the ship "Jules Gommes" belonging to the Societe Bayonnaise, and at the request of the French Consul, I was appointed as surveyor on board the "Duc d'Aumale" with Mr. Le Roy, captain for the world trade.

In answer to the sixth interrogatory:

6. I inspected the deck, masts, hold, ceiling cementing of the bottom and the accessory pumps, as well as re-exchange of the "Duc d'Aumale" and found everything in perfect order. [128]

In answer to the seventh interrogatory:

7. I went on board the "Duc d'Aumale" the 27th August, 1907; together with Mr. Le Roy, captain for the world trade, and Mr. Girard, overlooker.

In answer to the eighth interrogatory:

8. I already answered by number six.

In answer to the ninth interrogatory:

9. The result of my examination was that the vessel was in perfect seaworthiness.

In answer to the tenth interrogatory:

10. Yes.

In answer to the eleventh interrogatory:

11. After reading of the copy of the survey report, I state that said copy is a correct one of the original report, signed by me on the subject of the good seaworthiness of the "Duc d'Aumale."

(Commissioner's Stamp.) [129]

(Title of Court and Cause, and Number.)

Answers to Cross-interrogatories by Captain Beaudry.

Answers to cross-interrogatories propounded to Mr. BEAUDRY, a witness in the above-entitled action, residing at Granville, taken by me, Commissioner.

Said Captain BEAUDRY, in answer to the first interrogatory.

1. I answered to this question under number four of the direct interrogatory.

Second cross-interrogatory:

2. In the surveys I made previously to the "Duc d'Aumale's" one, I don't remember to have had the opportunity of requiring repairs besides these required by Lloyd's or Veritas, which repairs possibly included changes of rivets.

Third cross-interrogatory:

3. The "Duc d'Aumale" was afloat.

Fourth cross-interrogatory

4. I went down in the hold with Mr. Le Roy and together we passed the examination of the rivets, specially of the hull's ones.

Fifth cross-interrogatory:

5. I state under oath that I examined all visible rivets in the hull and that I found none of them bad.

Sixth cross-interrogatory:

6. I have just answered to this question under number five.

Seventh cross-interrogatory:

7. My overlooker's duties oblige me often to examine the hulls of the steel ships and I have got by so doing a strong experience.

QUESTION.—Have you anything to add concerning the case which is the motive of these interrogatories and cross-interrogatories?

ANSWER.—I have nothing more to declare.

[130]

Sworn to at Nantes, France, the first day of October, 1910, before me.

Signed: BEAUDRY,
CHARLES ED. SIMON.

(Commissioner's Stamp.) [131]

(Title of Court and Cause, and Number.)

**Answers to Interrogatories by Captain Le Roy, of
Ouistreham, on Behalf of the Compagnie
Maritime Francaise, for the French Barque
“Duc d'Aumale.”**

Answers to interrogatories propounded to Captain Emile Le Roy, a witness in the above-entitled action, residing at Ouistreham, taken by the authorized Commissioner.

Said Captain LE ROY being first duly sworn, on oath deposes and says:

In answer to the first interrogatory:

1. Emile Le Roy; thirty-eight years old; captain for the world trade; master of S. S. "Niobe."

In answer to the second interrogatory:

2. I have been sailing during nineteen years and have seven years command; since four years, I command S. S. "Niobe," of eighteen hundred tons dead-weight.

In answer to the third interrogatory:

3. I sailed as sailor and mate in world-trading sail and steam ships, and my whole command was employed in the international trade.

In answer to the fourth interrogatory:

4. I undertook many navigability surveys of steamers and sailing vessels since I am a captain. I did not take notice of all of them but here are the ones which I noted and remember:

French steel S. S. "Carol I," Newcastle-on-Tyne, 1903.

Steel three-masts barque "Jean Bart," of Dunkirk, Cardiff, 1906.

French steel barque "Joinville" of Havre, 9th March 1907, at Rotterdam.

Surveys in drydock, after hull damage, of steel steamers [132] "Jarlot," of Morlaix and "Lutèce," of Rouen, in the course of 1907.

I don't mention the surveys which I may have made since the "Duc d'Aumale's" one.

In answer to the fifth interrogatory:

5. Yes. I was in Rotterdam with S. S. "Niobe"

towards the 25th August, 1907, and went, at the request of the French Consul in Rotterdam, on board the sailing vessel "Duc d'Aumale" for the navigability visit of this ship.

In answer to the sixth interrogatory:

6. After having gone on board, at the request of the French Consul, and in the presence of Mr. Girard, overlooker, and Mr. Allemand, world-trading captain, acting by the time as ship's master, I went down the hold to look and sound attentively the ship's sides as well as the frames and stiffeners of all kinds binding the plates between each other; I let work the pumps, which were in good order and gave no water, I ascertained the good state of the masts' step, I inspected the sail-room, and ascertained all material and spare sails of the ship which was fully provided with same, having two complete suits of sails.

In answer to the seventh interrogatory:

7. I went on board the "Duc d'Aumale" the 27th August, 1907. I was assisted by Mr. Beaudry, world-trading captain and in the presence of aforesaid Mr. Girard and aforesaid Mr. Allemand.

In answer to the eight interrogatory:

8. I already answered the question by number six.

In answer to the ninth interrogatory:

9. The result of the examination was, from every point of view, in favour of the ship, giving me full satisfaction. The "Duc d'Aumale" was in a perfectly state of navigability. [133]

In answer to the tenth interrogatory:

10. Yes.

In answer to the eleventh interrogatory:

11. After reading of the copy of the survey report.

I state that it's a correct copy of the original report, signed by me on the subject of the seaworthiness of the "Duc d' Aumale."

(Commissioner's Stamp.) [134]

(Title of Court and Cause, and Number.)

Answers to Cross-interrogatories by Captain Emile Le Roy.

Answers to cross-interrogatories propounded to Mr. EMILE LE ROY, a witness in the above-entitled action, residing at Ouistreham, taken by me, Commissioner.

Said Captain EMILE LE ROY, in answer to the first cross-interrogatory, says:

1. I have already answered this question in the 4th question of the direct interrogatory. All these ships were steel built.

Second cross-interrogatory:

2. I have always found the ships which I have surveyed in good state, their rivets well tight.

The ships which I have surveyed after having sustained damages were repaired when I inspected them for their seaworthiness survey.

Third cross-interrogatory:

3. The "Duc d'Aumale" was afloat when I went on board for the survey.

Fourth cross-interrogatory:

4. With the help of a hammer, I have sounded

inside the vessel all accessible rivets including the hull's ones.

Fifth cross-interrogatory:

5. I could not examine all rivets of this vessel as she had some goods into the hold but I left shift, on various places, these goods and I verified that the plates were very dry and without any trace or rust caused by unstaunch'd rivets. I state under oath this is the express of the truth.

Sixth cross-interrogatory:

6. I have examined these rivets with a hammer and tried in vain to shake them with my hand. [135]

Seventh cross-interrogatory:

7. Independently to my surveys which I undertook during my command I believe I dare say that I have some experience in this matter, having been engineer on board steamers and being provided with a certificate as first-class engineer, in the mercantile marine.

QUESTION.—Have you anything to add concerning the case which is the motive of these interrogatories and cross-interrogatories?

ANSWER.—I have nothing more to declare.

Sworn to at Nantes, France, the ninth day of February, 1910, before me.

Signed: LE ROY.

CHARLES ED. SIMON.

(Commissioner's Stamp.)

[Endorsed]: Opened and filed Feby. 16th, 1911.
Jas. P. Brown, Clerk. By M. T. Scott, Deputy
Clerk. [136]

(Title of Court and Cause.)

**Depositions of Y. Perrot, Pierre Lalande and A. Rio,
Taken on Behalf of the Respondent Before
James P. Brown, Esq., U. S. Commissioner, etc.**

BE IT REMEMBERED, that on Tuesday, December 29th, and Wednesday, December 30th, 1908, pursuant to stipulation of counsel hereunto annexed, at the office of L. T. Hengstler, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, personally appeared before me, James P. Brown, Esq., a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., Y. Perrot, Pierre Lalande and Alphonse Rio, witnesses produced on behalf of the respondent.

Charles Page, Esq., of the firm of Messrs. Page, McCutchen & Knight, appeared as proctor for the libelants, and L. T. Hengstler, Esq., appeared as proctor for the respondent, and the said witnesses, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the depositions of Y. Perrot, Pierre Lalande and Alphonse Rio may be taken *de bene esse* on behalf of the respondent, at the office of L. T. Hengstler, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, on Tuesday, December 29th, and Wednesday, December 30th, 1908, com-

inside the vessel all accessible rivets including the hull's ones.

Fifth cross-interrogatory:

5. I could not examine all rivets of this vessel as she had some goods into the hold but I left shift, on various places, these goods and I verified that the plates were very dry and without any trace or rust caused by unstaunched rivets. I state under oath this is the express of the truth.

Sixth cross-interrogatory:

6. I have examined these rivets with a hammer and tried in vain to shake them with my hand. [135]

Seventh cross-interrogatory:

7. Independently to my surveys which I undertook during my command I believe I dare say that I have some experience in this matter, having been engineer on board steamers and being provided with a certificate as first-class engineer, in the mercantile marine.

QUESTION.—Have you anything to add concerning the case which is the motive of these interrogatories and cross-interrogatories?

ANSWER.—I have nothing more to declare.

Sworn to at Nantes, France, the ninth day of February, 1910, before me.

Signed: LE ROY.

CHARLES ED. SIMON.

(Commissioner's Stamp.)

[Endorsed]: Opened and filed Feby. 16th, 1911.
Jas. P. Brown, Clerk. By M. T. Scott, Deputy
Clerk. [136]

(Title of Court and Cause.)

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Taken on Behalf of the Respondent Before
James P. Brown, Esq., U. S. Commissioner, etc.**

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Charles Page, Esq., of the firm of Messrs. Page, McCutchen & Knight, appeared as proctor for the libelants, and L. T. Hengstler, Esq., appeared as proctor for the respondent, and the said witnesses, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the depositions of Y. Perrot, Pierre Lalande and Alphonse Rio may be taken *de bene esse* on behalf of the respondent, at the office of L. T. Hengstler, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, on Tuesday, December 29th, and Wednesday, December 30th, 1908, com-

mencing at the hour of 10 A. M. of each day, before James P. Brown, Esq., a United States Commissioner for the Northern District of California, and in shorthand by Clement Bennett. [137]

It is further stipulated that the depositions, when written out, may be read in evidence by either party on the trial of the cause, that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said depositions, and that all objections as to materiality and competency of the testimony are reserved.

It is further stipulated that the depositions may be used and read in evidence in the case of the Compagnie Maritime Francaise, a French Corporation, Libelant, vs. The Cargo of the French Bark "Duc d'Aumale."

It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof is hereby expressly waived.

(F. Henry, by stipulation, acted as interpreter.)

Deposition of Y. Perrot, for Respondent.

Y. PERROT, called for the respondent, sworn.

Mr. HENGSTLER.—Q. How old are you, Captain? A. Twenty-six.

Q. How long have you been master of vessels?

A. Seven months.

Q. Of what vessel are you the master now?

A. The "Marshal de Tureune."

Q. What cargo did the "Marshal de Tureune" carry on her last voyage?

(Deposition of Y. Perrot.)

A. Pig iron, brick and coke.

Q. What kind of a ship is she?

A. A French bark.

Q. A four-master? A. Three-master. [138]

Q. A wooden ship or steel ship? A. Steel.

Q. In a general way, how was the cargo stowed in the "Marshal de Tureune"?

A. There was brick in the after part of the after-hatch, 20,000 brick there. In the fore part of the after-hatch, there was again 20,000 bricks, and 700 ton of pig iron from there to the main hatch.

Q. Where was the coke stowed?

A. The coke was all over the cargo.

Q. Over all the rest of the cargo? A. Yes, sir.

Q. Where was your vessel stowed?

A. Newcastle-on-Tyne.

Q. Have you seen the stowage plan of the "Duc d'Aumale"? A. No, sir.

Q. Will you look at this plan, Captain, and will you state in what respect, if any, the stowage of the "Duc d'Aumale" differs from the stowage of your vessel? (Handing.)

A. There is no difference. Our iron is exactly in the same place.

Q. And how about the coke?

A. And the coke also.

Q. Captain, how long have you had experience in the stowage of vessels?

A. This is the first time that I have seen a general cargo loaded.

Q. Have you been on board the "Duc d'Aumale"?

(Deposition of Y. Perrot.)

A. Yes, sir.

Q. You were on board, were you not, when the agent of the Bureau Veritas examined the "Duc d'Aumale"?

A. Yes, sir; I saw a gentleman there, but I don't know if it was the surveyor of the Bureau Veritas.

Q. What did the gentleman do when you were on board? A. He was examining the pumps.

Q. Were you present during the examination?

A. Yes, sir.

Q. Did you see the pumps? A. Yes, sir.

Q. How do they compare with the pumps on your vessel, the "Marshal [139] de Tureune"?

A. They are exactly the same.

Q. Do you know how those pumps compare with the pumps used in other French vessels?

A. It is the only model of pump that I saw on board of French ships.

Q. Now, Captain, I want to ask you another question with reference to stowage, if you know. Do you know the reason why pig iron is stowed in the after part of a vessel?

A. Because without that, we could not take enough coke to load the vessel.

Q. Is that the only reason that you know of?

A. That is the only reason.

Q. Do you know any reason, Captain, why a cargo like pig iron could not be stowed in the fore part of a vessel?

A. You must have the weight aft in order to take in a full cargo.

(Deposition of Y. Perrot.)

Q. Do you mean by that that the heavy cargo should be in the after part of a vessel? If you do not mean it, say so. A. Yes, sir.

Cross-examination.

Mr. PAGE.—Q. Why must the heavy part of the cargo be in the after part of the lower hold of the vessel only?

A. For the good stability of the ship.

Q. Do you know whether there is any recognized rule as to the amount of cargo in weight to be carried in the lower hold as compared with the amount carried in the between-decks?

A. I do not know the regulation.

Q. I do not ask whether there is any law, but whether there is any rule among those who understand the stowage of ships, giving some proportion between the two, the lower deck and the upper deck.

A. About one-third in between-decks.

Q. And that is necessary, is it not, for the stability of the ship?

A. The rolling of the ship is not so heavy with a good weight in the between-decks. [140]

Q. And if the ship does not roll, then she does not labor so much in a heavy sea?

A. It depends a good deal on the ship.

Q. Is it not the ordinary result of rolling that a ship must strain in a heavy sea?

A. Yes, sir; all the ship works a good deal during rolling.

Q. Is your ship owned by the same company that owns the "Duc d'Aumale"? A. No, sir.

(Deposition of Y. Perrot.)

Q. Do you know whether she was built by the same builder? A. I do not know.

Q. Do you know whether she is exactly the same class in her lines and method of building?

A. Exactly.

Q. Is she exactly the same tonnage?

A. My ship is 1,938 register. I do not know the "Duc d'Aumale's."

Q. In the voyage on your ship altogether, what was the quantity of bricks that you had on board?

A. 43,000 bricks.

Q. Can you tell what the weight of those bricks was? A. 116 tons.

Q. And were all of those bricks in the after part of the lower hold?

A. There were 15,000 bricks stored forward the main hatch.

Q. Was that all in the lower hold, or in the between-decks? A. In the lower hold.

Q. What weight did you have of iron on that voyage? A. 875 tons.

Q. Where was the iron stowed?

A. In the lower hold, and part in the between-decks.

Q. How much in the between-decks?

A. 200 ton in the between-decks.

Q. And how much coke did you have on board of your ship? A. 1800.

Q. How many tons of that coke were in the between-decks? A. I don't know exactly.

Q. Do you know how much of the coke was in the

(Deposition of Y. Perrot.)

lower hold? A. I don't now either. [141]

Q. So that you cannot tell as to whether your own ship was stowed with one-third of the weight of the cargo in the between-decks, and about two-thirds in the lower hold? A. I don't know exactly.

Q. Have you any judgment as to what really was the weight in the between-decks, and what was really the weight in the lower hold—have you any judgment that you can speak of?

A. I estimate 600 ton of coke in the between-decks, and 200 tons of pig iron.

Q. That would be 800 tons in the between-decks?

A. Yes, sir.

Q. And about how much altogether in the lower hold? A. 2,000 tons.

Q. If your ship was carrying 600 tons of pig iron, and the rest coke, would you consider that it was a proper division of the iron to place 600 tons in the after part of the lower hold, and only 60 tons of cargo between-decks? A. Yes, sir.

Q. In your ship, according to the rule that you have mentioned that there should be about one-third in the between-decks and two-thirds in the lower hold, do you consider that placing 660 tons of cargo in your between-decks, and 2,000 tons in the lower hold would be good stowage? A. Yes, sir.

Q. If you placed more of the heavy cargo in the between-decks than 60 tons, would not the ship be less liable to strain and labor in a heavy sea than if you leave 600 tons in the lower hold as well as the coke?

A. I do not believe it.

(Deposition of Y. Perrot.)

Q. Why did you put 800 tons of cargo in the between-decks in your own ship if you thought that 660 tons would be enough in the between-decks?

A. I did not know at the time exactly the weight I could take.

Q. Was your ship stowed under your personal direction on this last voyage?

A. No, sir, the overseer of the company was there.

Q. So that you had nothing to do with it?

A. No, sir.

Q. I understand that you never have superintended the stowing of a ship yourself?

A. No, sir; not yet. [142]

Q. In what kind of ships have you been engaged before this voyage, Captain?

A. On ships which were in the Chili trade.

Q. Carrying nitre? A. Yes, sir.

Q. No general cargo at all; all single cargo?

A. No general cargo.

Redirect Examination.

Mr. HENGSTLER.—Q. Did the coke in your ship fill out the entire hold and between-decks, except that part of it which was filled by pig iron and brick?

A. Yes, sir.

Deposition of Pierre Lalande, for Respondent.

PIERRE LALANDE, called for the respondent, sworn.

Mr. HENGSTLER.—Q. How old are you, Captain? A. Twenty-six.

Q. How long have you been going to sea?

(Deposition of Pierre Lalande.)

A. About eight years.

Q. You are the master of the "Duc d'Aumale," are you not? A. Yes, sir.

Q. How long have you been her master?

A. Sixteen months.

Q. That is during this last voyage? A. Yes, sir.

Q. Was this the first voyage that you have made in the "Duc d'Aumale"? A. Yes, sir.

Q. The last one? A. Yes, sir.

Q. Had you been master of any ship before you became master of the "Duc d'Aumale"?

A. No, sir.

Q. About what time, Captain, did you join the "Duc d'Aumale," and where?

A. At Rotterdam, September, 1907.

Q. Did you superintend her stowage?

A. No sir.

Q. Who superintended her stowage?

A. The overlooker, the port captain.

Q. He is in the employ of the company, is he not?

A. Yes, sir. [143]

Q. The superintendent of the vessel while she is in port, is he not? A. Yes, sir.

Q. What is the name of this superintendent?

A. Plisson.

Q. When you joined the vessel, had her loading been completed? A. Not quite.

Q. You saw the last part of it? A. Yes, sir.

Q. Do you know whether or not any survey of the hull of the vessel *yourself*, had been made before you joined her, and how long before?

(Deposition of Pierre Lalande.)

A. I don't know exactly how long it was before they took cargo, but I know for a fact that the survey had been passed in drydock by the agent of the Bureau Veritas, and two captains.

Mr. PAGE.—Q. Do you know that of your own knowledge, or whether someone told you about it?

A. I have the certificate.

Q. That is all you know about it?

A. Yes, sir; that is all I know about it.

Mr. HENGSTLER.—Q. Where is the certificate of the report of survey?

A. It has been on board up to now.

Q. You have that certificate?

A. Yes, sir (producing.)

Q. Is this the certificate that has been on board of your ship? A. Yes, sir.

Q. And you brought it with you on board of the ship to this port, did you? A. Yes, sir.

Mr. HENGSTLER.—I offer this in evidence.

Mr. PAGE.—I object to it as hearsay.

Mr. HENGSTLER.—I will offer in evidence the original and translation thereof, as "Respondent's Exhibit 1."

(The original and translation are marked "Respondent's Exhibit 1.")

Q. I will show you this document, and I will ask you whether that is one of the ship's papers, and if so, what it is (handing). [144]

A. That is one of the papers of the ship. It was given at Rotterdam.

Q. To whom? A. To me.

(Deposition of Pierre Lalande.)

Q. At Rotterdam?

A. By the consignee of the ship, Mr. Vandersie.

Mr. HENGSTLER.—I offer this in evidence, and ask to have it marked Respondent's Exhibit 2.

Mr. PAGE.—Objected to as hearsay.

(The document is marked Respondent's Exhibit 2.)

Mr. HENGSTLER.—Q. On what date did the vessel leave Rotterdam?

A. 17th of September, 1907. She was cleared on the 17th, and left Rotterdam on the 19th.

Q. What was the first port at which she stopped?

A. Brest.

Q. Where is Brest? A. In France.

Q. And how long did she remain there, and on what days?

A. She arrived on the 22d at 3 P. M., and left on the 24th at 9 A. M. in the morning.

Q. Now, Captain, will you describe the first parts of the voyage, referring to your log, day after day, with reference to the weather which you encountered?

A. We left Brest on the 21st at 9 o'clock in the morning. There was a small breeze from the north, shifting from the north to west, and we sailed until the 26th of September, and had fine weather and calm sea. We encountered westerly winds with a choppy sea.

Q. On what day?

A. The 26th of September. There was a swell until the 28th.

(Deposition of Pierre Lalande.)

Q. What occurred on the 28th?

A. The wind hauled to the southwest, freshening and increased, the sea coming heavy rapidly. The wind shifted to the northwest on the 28th at 2 o'clock in the morning. The weather cleared up, but the sea became very heavy. [145] We had very violent squalls, especially during the watch from 8 o'clock in the morning until noon. The weather became cloudy again in the afternoon with squalls, the sea being very heavy, direction west, northwest. From 8 P. M. to midnight, the sea was still heavier, and the squalls more and more violent.

Q. Are you still on the 28th?

A. Yes, sir; on the 29th the weather became fine, and the squalls less and less violent, the wind decreasing rapidly, there being still a squall. There were times when the ship was rolling heavily, the sea coming from abeam. At 4 o'clock in the afternoon, we found the increase of water in the ship's hold. We found 23 centimeters at four o'clock. We pumped at once, and cleared the water from the hold in a quarter of an hour.

Q. What latitude and longitude was the vessel in on that day, the 29th?

A. 38 degrees, 28 minutes north latitude at noon; 17 degrees, 43 minutes west. The vessel was steering south 35 degrees west.

Q. Now, go ahead and tell what happened next.

A. We saw every day that water was increasing in the hold regularly, about one centimeter every hour.

(Deposition of Pierre Lalande.)

Q. What did you do with the pumps during that time?

A. We pumped regularly, morning and evening. At 7:20 in the morning and 4:20 at night.

Q. For how long a time each time?

A. About twenty minutes each time.

Q. Did you succeed in controlling the inflow of the water by this pumping?

A. By pumping forty minutes, we cleared the water from the hold. [146]

Q. How long did that go on?

A. Nothing happened particularly until the 22d of November.

Q. Where was the vessel on that day?

A. The vessel was about forty-nine degrees, thirty-seven minutes south latitude, and 66 degrees, 21 minutes west longitude. On that date the weather was fine until 9 o'clock at night. The wind increased in force rapidly, and we had to take in all sails but the foresail, two lower topsails, and the lower stay-sails. At 11 o'clock, the wind blew a storm; and the sea became heavier very rapidly. At twelve o'clock, in a gust, we lost the topmast stay-sail and the mizzen stay-sail. In a while the sea became tremendous, and we lost the fore stay-sail. The ship not being stayed by the sails we had lost, she rolled terribly. The decks were full of water. The decks being full of water, and the ship rolling heavily, we could not get the exact soundings.

Q. Could you pump?

A. No, sir; we could not pump. I went myself in

(Deposition of Pierre Lalande.)

the pump well, and I saw there was an increase of water, but we could not pump because the bottom of the pipe at each rolling was dry, the vessel being on her side. Another survey was made at four o'clock in the afternoon, and we saw the same thing, the sea being still very heavy, and the wind shifting to the southwest, the ship in a cross sea. We wore the ship around at 8 o'clock. The sea was very high until the 25th of November at 8 o'clock A. M. On the 24th of November, coming around westerly at 2 o'clock P. M., we wore the ship around to take a starboard tack. I ordered the pumps to be sounded by the carpenter when the ship was upright, and the carpenter reported that he found one meter and 25 centimeters in the hold, so that the water had increased rapidly since the morning. After the wearing of the ship, I set one watch to the pumps, and ordered an examination of the life-boats [147] made to see that they were in order. At six o'clock, the wind freshened again, big seas coming from every part; the decks being always covered with water it was very difficult to work the pumps. At six o'clock, we found one meter, and fifty-five centimeters in the hold. At six o'clock I called the crew aft and explained to them the situation, and we resolved to take refuge in the Falkland Islands for the saving both the cargo and the ship. At the same hour we kept her off, and made for the Islands.

Q. We do not need the further details until you get to the place where you beached the ship.

(Deposition of Pierre Lalande.)

A. That is a few hours later. Both watches were relieving each other at the pumps every half hour, so they were working continually, and I saw that the water did not increase so much while the ship was running before the wind. The ship was steering very badly when we were close to Roy Cove. We entered the cove at 4:30 and at 4:35 the ship was beached at 500 meters from the entrance to the cove. At that time the sounding of the pump was two meters and 27 centimeters, the ship having a list of 6 degrees to starboard.

Q. Now, how long were you at Roy Cove with the ship? A. Until the 17th of December.

Q. How long did the vessel lie on the beach at Roy Cove? A. Until the 15th of February.

Q. What steps did you take during that time after the vessel was beached to communicate with the outside world, and communicate with your owners, or the owners of the cargo, if any?

A. As soon as we arrived at Roy Cove, a postman passed on horseback, on his way to Fox Bay, and I gave him a letter, and told him to try to send my letter to Port Stanley. I gave him a cable in which I could say only very little, because I knew not much about [148] the ship's situation or damage. A few days afterwards, on the 3d of December, one schooner named the "Lafonia" passed, and I gave him my mails for the Governor of the Falkland Islands. I asked him to send me surveyors. I did not send any cable, because the captain of the "Lafonia" told me

(Deposition of Pierre Lalande.)

there was no telegraphic communication with the outside world.

Q. What was done in response to your communication which you sent to the Governor of the Falkland Islands?

A. A surveyor came on the 13th of December.

Q. What was the name of that surveyor?

A. Thomas.

Q. What did he do?

A. He came on board, and he made a general survey of the cargo.

Q. Did he make any report of his survey to anybody?

A. He made a provisional report, and he gave it to Mr. Thompson, Receiver of Wrecks, who arrived on the 16th of December.

Q. Have you seen that report, Captain?

A. Yes, sir.

Q. Do you remember when this Captain Thomas was on board, whether he used the pumps of the vessel? A. Yes, sir.

Q. If he states in his report which he made to Mr. Thompson, that after half an hour of pumping with both pumps on the 14th inst., no reduction of the water was made, have you any explanation of that fact, that no reduction was made, or is that fact correctly stated?

A. It is. When the surveyor ordered the pumps to be worked, it was nearly high water, and the ship was beginning to straighten up, and I called his attention to that fact in the presence of my officials,

(Deposition of Pierre Lalande.)

and I told him while the starboard side of the ship was lying on the bottom, the water did not come in the hold any longer, but a small quantity of water came in the hold as soon as the ship was straightened up. At this time there was about 14 feet of water in the hold, but there was a difference [149] between the level of the water in the hold and the level of the sea outside. At high water there was 24 feet of water where the ship was, that is on the starboard side.

Q. Do you know whether Mr. Thomas made any other reports in connection with your ship

A. Yes, sir, he made several other reports for surveys that he made at Port Stanley.

Q. Have you seen those reports? A. Yes, sir.

Q. Did you do anything with reference to either one of those reports yourself?

A. I wrote to my owners about the reports, and it went to Montevideo.

Q. What did you write to your owner about it?

Mr. PAGE.—I object to that. The letter speaks for itself. The reports should be in evidence, if they are referred to, so that we can examine them.

Mr. HENGSTLER.—We do not really need those reports. You can offer them in evidence if you want to.

Mr. HENGSTLER.—Q. You did not protest to the Governor of the Falkland Islands against these reports made by Mr. Thomas? A. No, sir.

Q. Now, a little while ago you stated that you left Roy Cove on the 17th of December? A. Yes, sir.

(Deposition of Pierre Lalande.)

Q. Where did you go at that time?

A. I went to Port Stanley with the intention of sailing for Montevideo, or Punta Arenas.

Q. Will you please identify this document (handing)? A. Yes, sir.

Q. What is the document which I hand you?

A. It is a certificate of the Bureau Veritas attesting that the ship had been passed on survey at Rotterdam.

Mr. PAGE.—Does this come out of the captain's possession?

Mr. HENGSTLER.—It is a certified copy.

Q. Is this one of the ship's papers, Captain?

A. Yes, sir. [150]

Q. You carried it in your ship to San Francisco, did you, from Rotterdam?

A. It is a certified copy of the one I have on board of my vessel.

Mr. HENGSTLER.—We offer it in evidence.

Mr. PAGE.—I object to it as hearsay.

(The document is marked Respondent's Exhibit No. 3.)

Mr. HENGSTLER.—We can offer the original.

Mr. PAGE.—You can treat it as the original.

Mr. HENGSTLER.—Q. Now, Captain, you testified that you left Port Stanley on December 17th?

A. Yes, sir.

Q. And when did you return on board of the vessel?

A. I stayed 28 days in Montevideo, waiting instructions of the owners, and during that time I was

(Deposition of Pierre Lalande.)

trying to ascertain what means of salvage could be furnished in Montevideo or Buenos Ayres.

Q. And what success did you have?

A. I asked the firm of Lusage at Montevideo, who refused to do any salvage at any price. At Buenos Ayres I applied of the firms of Meanovitch and Delfino.

Q. What success did you have with these firms?

A. The firm of Delfino refused to entertain the salvage, and the firm of Meanovitch would not undertake anything at less than £8,000.

Q. What did you do then?

A. I received a cable from my owners, informing me that the Salvage Association of London had arranged the salvage with Messrs. Brown & Blanchard of Punta Arenas, and giving me orders to go to that place to join the salvage expedition.

Q. What did you do then?

A. I took the steamer leaving the following day, and proceeded to Punta Arenas. I received a cable from my owners, authorizing me to sign a contract of salvage, this contract of salvage being salvage according to the cable exchange between the Salvage Association of London, and Messrs. Brown & Blanchard [151] of Punta Arenas of the one part, and those cable exchanges between my owners and myself. I left Punta Arenas with the steamer "Lovart," and all the gear necessary for the salvage. Do you want the date exactly?

Q. The date you left Punta Arenas? A. Yes.

Q. No. Do you remember when you got back to

(Deposition of Pierre Lalande.)

Roy Cove to your vessel from Punta Arenas?

A. It was the 11th of February that I left Punta Arenas, I think.

Q. Verify it by your log-book, so that we can get it exactly right.

Q. (After examination.) I left Punta Arenas on the 6th of February.

Q. And when did you return on board the "Duc d'Aumale"?

A. I returned on board the "Duc d'Aumale" on the 10th of February.

Q. What was done after you got back on board the vessel?

A. As soon as we arrived, we started to put in place the pump.

Q. What pump are you referring to?

A. The steam pump furnished by the firm of Brown & Blanchard.

Q. What then?

A. We put in place the steam pump to connect this pump with the boiler on board the ship, and started to pump on the same day in the afternoon.

Q. How long was that pumping kept up?

A. We pumped two hours.

Q. Two hours on that day? A. Yes, sir.

Q. Did you pump the day after?

A. No, sir; on the same day a diver went down below to inspect the hull of the ship.

Q. What did he find?

A. He could not find anything, the ship was laying in the mud to the height of 1 meter 40.

(Deposition of Pierre Lalande.)

Q. Can you tell, Captain, when the ship left Roy Cove? A. The 13th of February.

Q. What was done between your return to the ship and the 13th of February to enable her to continue to proceed on this new voyage? [152]

A. On the 11th we continued to pump, and we were fixing up posts and gear to hold the ship in the middle of the stream.

Q. What else. Tell us all that was done.

A. We finished pumping on the 13th of February, and left Roy Cove immediately.

Q. Did you leave under your own sail?

A. No, sir; in tow of the steamer "Lovart."

Q. That is, the salvage steamer?

A. Yes, sir; and anchored in Whaler Bay at 9 o'clock on the 13th of February.

Q. And what was your destination at that time?

A. Port Stanley.

Q. When did you arrive at Port Stanley?

A. On the 16th or 17th of February.

Q. Then, how long was the vessel at Port Stanley?

A. We left again on the 5th of April.

Q. Now, Captain, state what was done at Port Staniey with reference to any surveys made on the condition of the vessel and the cargo.

A. I first asked a survey in order to find out if the ship could proceed on her voyage to San Francisco, the diver having found nothing at Stanley.

Q. Whom did you ask for that survey?

A. The Governor of the Falkland Islands.

Q. And what was the result of that request?

(Deposition of Pierre Lalande.)

A. They would not allow me to go out of Port Stanley without having a tugboat. We made application afterwards to know if we could proceed to Montevideo to complete the repairs.

Q. To whom did you make the application?

A. To the Governor of the Falkland Islands.

Q. Do you know whether or not the Governor appointed any surveyors to report on the conditions?

A. The Governor appointed Captain [153] Thomas, the captain of the "Margaret," and a carpenter, Mr. Biggs.

Q. Did those gentlemen make a survey?

A. Yes, sir; they came on board.

Q. They came on board? A. Yes, sir.

Q. Were you present when they surveyed the vessel? A. Yes, sir.

Q. Do you know whether or not they made any report of their survey?

A. They made a report, and they could not agree, and decided that the ship could not leave Stanley.

Q. Do you know on what ground they made that decision?

Mr. PAGE.—We object to that question. The documents ought to be produced.

Mr. HENGSTLER.—Q. It was a written report? A. It was a written report.

Q. Did you receive that report, or receive any copy from the surveyors of the report?

A. I received a copy.

Q. Will you please look at this document, and

(Deposition of Pierre Lalande.)

state what it is (handing) ?

A. It is a survey that I asked of the Governor of the Falkland Islands after coming back from Punta Arenas.

Q. To be made where?

A. In order to find out if, with a steam pump, the ship was in a condition to proceed to Montevideo.

Mr. HENGSTLER.—I offer this in evidence, and ask to have it marked Respondent's Exhibit 4.

(The document is marked Respondent's Exhibit 4.)

Q. I forgot to ask you a question with reference to the time you were still at Roy Cove. I want to ask you the reason why you did not discharge at Roy Cove 1200 tons, or any portion of the cargo?

A. Because of the difficulty of the operation.

Q. Explain the difficulty. Explain it in some details.

A. We could not throw the coke in the water because we would have blocked the river. [154]

Q. Captain, please state the reason, if there was any particular reason, why no cargo was discharged at Port Stanley.

A. For two reasons. The first one was, that it was impossible to sell any coke at Port Stanley, and the cost of discharging would have been very high. The second reason was, that leaving Port Stanley after having discharged a certain amount of the cargo, the ship would have had only 600 tons of pig iron in the lower hold, and the coke

(Deposition of Pierre Lalande.)

not going high enough in the hold in order to balance, the ship would have been in a very bad condition to navigate in those regions.

Q. Are those all the reasons? A. Yes, sir.

Q. What did you do after you received this final report of Captain Thomas which I just handed you?

A. I made arrangements to get ready to leave Port Stanley.

Q. And when did you leave Port Stanley?

A. The 5th of February.

Q. And that was on the way to what place?

A. Montevideo.

Q. When did you arrive at Montevideo? You can refer to the log-book to refresh your memory.

A. The 17th of February.

Q. What means of propulsion was used on the way from Port Stanley to Montevideo? A. Sailing.

Q. Your own sail? A. Yes, sir.

Q. Did you use any tug?

A. Merely to leave the harbor.

Q. The rest of the way you went under your own sail? A. Yes, sir.

Q. Did the vessel leak on the way to Montevideo?

A. No, sir.

Q. Did she leak at any time after that again?

A. We stayed thirteen days at Montevideo, during which time the ship was not leaking.

Q. And she began to leak again?

A. She began to leak on the 30th day of April.

[155]

Q. Do you know, Captain, any reason why she

(Deposition of Pierre Lalande.)

ceased to leak, and the leak commenced afterwards?

A. I think that a rivet was gone, and the hole of the rivet beam stopped up by sea-weed or kelp. This kelp kept growing during the time that the ship was in salt water, and after a little time in fresh water this kelp died and fell out of the hole.

Q. How long did you remain in Montevideo?

A. Fifteen days.

Q. On what day did you leave Montevideo?

A. The 2d of May.

Q. On the way to what place? A. Buenos Ayres.

Q. On what day did you arrive at Buenos Ayres?

A. The 6th of May.

Q. Please state the reason why you remained in Montevideo, and why you left Montevideo, and repaired to Buenos Ayres with your vessel?

A. We were inquiring which was the best for the operation of the ship, such as the drydock, discharging, storage, reloading or *sail* of the cargo.

Q. And what did you find out? What was the result of your inquiries?

A. We could not sell the cargo anywhere, either at Montevideo or Buenos Ayres. Moreover, the cost of discharging and storage, and reloading the cargo being cheaper at Buenos Ayres than Montevideo, I decided after advice from my owners to proceed to Buenos Ayres.

Q. Did you receive any instructions from anybody to sell the cargo, Captain? A. From my owners.

Q. State what attempts you made both in Monte-

(Deposition of Pierre Lalande.)

video and Buenos Ayres to find a purchaser for the cargo.

A. With the help of my consignee, Mr. Cristofsen, I made inquiries of all the dealers in coke, asking them if they would agree to buy any or all of the cargo. As I could find nothing in Montevideo, I went myself to Buenos Ayres, where I made inquiries with a view [156] of selling the cargo.

Q. What steps did you take in Buenos Ayres?

A. I went with Mr. Cristofsen at Buenos Ayres to the principal dealers in coal, and I asked also of the French Consul, if he could give me some information, but I could not find anything.

Q. Did you receive any instruction from the owners of the cargo during this time with reference to the disposition of the cargo? A. No, sir.

Q. Not at Montevideo? A. Not at Montevideo.

Q. Nor at Buenos Ayres? A. No, sir.

Q. At any time? A. No, sir.

Q. Did you receive any instructions regarding the disposition of the cargo from the underwriters of the cargo?

Mr. PAGE.—I object to the question. Who are the underwriters of the cargo, so that he knows who the underwriters of the cargo were.

Mr. HENGSTLER.—Q. Do you know who the underwriters were?

A. Mr. Van Eck, the agent for the underwriters at Buenos Ayres.

Q. Did Mr. Van Eck have any communication with

(Deposition of Pierre Lalande.)

you that led you to think he had any interest in the cargo?

Mr. PAGE.—We object to that as calling for the conclusion of the witness, as to what Mr. Van Eck had in his mind as to his own position with reference to the cargo.

A. He never wrote me.

Mr. HENGSTLER.—Q. Did he ever speak to you and tell you that he had any interest in the cargo?

A. I went to see him on my arrival.

Q. At what place?

A. With Mr. Cristofsen of Buenos Ayres.

Q. What did he tell you?

A. He told me that I had done well to come to Buenos Ayres where the cost of the operation was less than at Montevideo, but there was no hope to sell the cargo at Buenos Ayres any more than at Montevideo. [157]

Q. Now, Captain, will you tell us what was done with the cargo while you were at Buenos Ayres?

A. The cargo of coke was placed in storage. We kept on board the pig iron. After discharging the coke, we went in drydock and reloaded the cargo after the completion of the repairs inside and outside of the ship.

Q. Did you discover what the cause was of the leak of the vessel when she was in drydock?

A. We discovered one rivet entirely gone.

Q. Where was that rivet?

A. That rivet was about one meter forward off the mizzen mast.

(Deposition of Pierre Lalande.)

Q. How near the keel of the vessel?

A. About one foot off the keel.

Q. And on which side, the starboard or portside?

A. The starboard.

Q. Was that the rivet that you referred to in your explanation a little while ago? A. Yes, sir.

Q. What other damage was discovered in drydock that would explain the leaking of the vessel?

A. Several other rivets were leaking, especially one very close to the foremast, which was very loose.

Q. What other damage, Captain, if any, was there that would explain the leaking?

A. A plate near the stern-post was bent in, and all the rivets were loose.

Q. Anything else? A. Nothing else.

Q. Was there no damage to the plates?

A. The plates in the aft of the ship were bent. The cement was broken in the butt end of several plates.

Q. Was there any survey made of the vessel while she was in drydock?

A. One survey was held by the surveyor to the Bureau Veritas, and two other surveyors.

Q. What was the name of the surveyor of the Bureau Veritas? A. Vu Cassovitch. [158]

Mr. PAGE.—Q. Is that the same survey that was made under the auspices of the French consul?

A. No, sir.

Q. At whose request was that survey made in the drydock?

A. At the request of the consignee of the ship.

(Deposition of Pierre Lalande.)

The agent of the Bureau Veritas made a survey without any request:

Q. Did the French consul take any part in the survey of the vessel?

A. He appointed two other surveyors.

Q. What are the names of the two surveyors whom the French consul appointed?

A. Mr. Potel, a civil engineer, and Mr. Paoli, captain of the French steamer "Montpelvouse."

Q. Have you seen the report which was made by the two surveyors appointed by the French consul?

A. Yes, sir.

Q. Did you see a copy of that report?

A. No, sir.

Q. The captain did not give you a copy of that report? A. No, sir.

Q. Please look at this document, and tell us what it is and how you received it.

A. It is a report of a survey made by Paoli and Potel.

Q. Made when the ship was in drydock?

A. Yes, sir.

Q. And how did you come into possession of this paper? A. It was given to me here.

Q. Here in San Francisco? A. Yes, sir.

Q. By whom? A. It was given to me by you.

Q. You have never seen it before? A. No, sir.

Q. Let me ask you again: Have you seen this report before?

A. I have read it before it was sent to San Francisco.

(Deposition of Pierre Lalande.)

Q. Where did you read it?

A. At Buenos Ayres.

Mr. HENGSTLER.—I offer this together with the translation to be hereafter furnished, and ask to have it marked Respondent's Exhibit 5. [159]

(The document is marked Respondent's Exhibit 5.)

I also offer this document marked "14" in evidence as Respondent's Exhibit 6.

(The document is marked Respondent's Exhibit 6.)

Q. That is a report made as it purports by A. Bonhomme and A. Potel on May 30th, 1908, before the vessel went into drydock? A. Yes, sir.

Q. Now, Captain, in this last report, I notice a statement to the effect that on Saturday the 16th, "We asked two men of the crew by the name of Chalm and Palvadeau, who stated that while the vessel was on the beach in the Falkland Islands in the night of the 15th and also the nights of the 17th and 18th of December, 1907, one end of the fire hose was hanging out from the port hole of the store room of the vessel into the sea, and the other end was in the store room so that a syphon was formed in this manner." What have you to say, Captain, with reference to this hearsay statement in this report?

A. I asked an inquiry to the French consul to this effect with regard to this matter.

Mr. PAGE.—We make no point with reference to this rumor or report.

(Deposition of Pierre Lalande.)

Mr. HENGSTLER.—Then I withdraw all inquiry upon the subject.

Q. On what day did the vessel leave the drydock?

A. June 8th.

(An adjournment is here taken until to-morrow, Wed., Dec. 30, 1908, 10 A. M.)

Wednesday, December 30th, 1908.

PIERRE LALANDE recalled—direct examination resumed.

Mr. HENGSTLER.—Q. Captain, after leaving the drydock, what was done with reference to the vessel or the cargo?

A. As soon as the vessel left the drydock, the repairs in the interior of the vessel [160] were completed, the changing of the ceilings, and the scraping and the painting of the hull inside, and then the cargo was taken on board of the vessel.

Q. To go back for a moment; did the leaking of the vessel continue after it had commenced to releak in Montevideo? A. Yes, sir.

Q. How long did it continue?

A. It continued until the moment that the vessel was aground at Buenos Ayres.

Q. How long was she aground at Buenos Ayres?

A. About three days.

Q. And during how much of that time did the vessel stop to leak, if you have any record of that?

A. She did not leak while she was aground, and two days after she floated, we went to the drydock, and the vessel did not leak during that time.

Q. How do you explain the fact that the vessel did

(Deposition of Pierre Lalande.)

not leak during that time?

A. The holes were filled by the mud, and the pressure of the water was not so great as before, the vessel drawing only 9 feet.

Q. Now, you stated that after the vessel came out of drydock, her cargo was restowed, did you not?

A. Yes, sir.

Q. Was the stowage affected in the same way in which she had been stowed before, or was there any difference?

A. The pig iron was not stowed in the same way as before.

Q. In what way was the pig iron stowed before when the ship left Rotterdam?

A. We had 600 tons of pig iron stowed between the main hatch and the after-hatch, and 60 tons in the between-decks in the center.

Q. I show you this diagram. Is that a correct representation of the stowage of the vessel when she left Rotterdam (handing)? A. Yes, sir.

Q. Is this stowage plan one of the regular ship's papers? A. Yes, sir. [161]

Q. I will show you now Respondent's Exhibit 2, and ask you to state what this paper is.

A. It is a report of the surveyors who overlooked the stowage of the cargo. It was given to me by my consignee, Mr. Vandersie, before I left Rotterdam.

Mr. HENGSTLER.—I offer this stowage plan in evidence, and ask to have it marked Respondent's Exhibit 7.

(Deposition of Pierre Lalande.)

(The stowage plan is marked Respondent's Exhibit 7.)

Q. Do you personally know the surveyor whose name is signed to the stowage report? A. No, sir.

Q. Have you ever met him? A. No, sir.

Q. Do you know, Captain, if any custom exists in Rotterdam relative to the examination of the stowage of vessels that are loaded in Rotterdam?

Mr. PAGE.—We object to the question unless it is first shown that the captain has been in Rotterdam long enough, and has known enough of the business of Rotterdam to enable him to speak with knowledge as to what the customs of Rotterdam are.

Mr. HENGSTLER.—I asked him if he knew such a custom existed.

Mr. PAGE.—How can he know it unless he lived among them. You can not prove a custom except by somebody who has lived there, or has been there so often in the shipping trade that he knows of the customs. As I understand, the captain arrived there after the ship was loaded.

Mr. HENGSTLER.—Q. Had you been in Rotterdam before this occasion when you joined the "Due d'Aumale" in the port of Rotterdam? A. No, sir.

Q. Do you know if any custom exists in European ports generally, relative to the examination of the stowage of vessels which have been loaded in those ports, from your past experience? [162]

A. I don't know the general rules of the port.

Q. How long have you had experience in the stowage of vessels?

(Deposition of Pierre Lalande.)

A. I have been seven years officer on board of vessels of the same kind as the "Duc d'Aumale."

Q. Have you had previous experience with the stowage of cargo of this character, pig iron and coke?

A. No, sir.

Q. Have you any opinion with reference to the method in which this vessel was stowed at Rotterdam?

A. My opinion is that the vessel was perfectly well stowed in Rotterdam.

Q. What are the reasons for your opinion?

A. I think that the man who overlooked the cargo was so capable that the vessel's hold was full of cargo and in good trim.

Q. What man do you refer to?

A. The overlooker of the cargo, and the surveyor of the cargo.

Q. What is his name? A. Plisson.

Q. Is that the only ground upon which you base your opinion that the cargo was well stowed?

A. And also in the way in which the ship behaved at sea.

Q. Have you any other ground for your opinion?

A. No, sir.

Q. Do you know from your past experience how the weight of cargo should be distributed in the vessel in stowing the cargo?

A. On board of a vessel of the "Duc d'Aumale's" type, 2,200 tons must be taken in the lower hold, and 800 tons in the between-decks, with a full cargo, but we cannot take 800 tons of heavy cargo resting on the

(Deposition of Pierre Lalande.)
beams of the between-decks.

Q. How many tons of cargo were in the between-decks on this last voyage, about?

A. About 760 tons.

Q. When the cargo was restowed at Buenos Ayres, how was it stowed?

A. We had one pile of pig iron on the fore-part of the after-hatch, about 350 tons; another pile on the after-part of the [163] after-hatch, and a small lump just abaft of the foremast, and the coke was spread all over the cargo as before. The 60 tons of pig iron was in the same place as at Rotterdam, in the between-decks.

Q. The only part of the pig iron that was changed in the stowage was the part in the hold?

A. Yes, sir.

Q. Now, Captain, why was this change in the stowage made at Buenos Ayres?

A. This change was advised by the surveyors. Myself, I did not see any objection to it, all the more because it was an economy of time.

Q. Who were the surveyors that advised the change? A. Mr. Van Eck, and Captain Schutz.

Q. Who was the latter gentleman, Captain Schutz, and by whom was he appointed?

A. He was sent by Mr. Van Eck. He was a sea captain.

Q. A captain of what vessel?

A. He had no vessel. I met him at the Delfino firm. I do not know if he belongs to that firm or not.

Q. How do you know that he was a sea captain?

(Deposition of Pierre Lalande.)

A. He was introduced to me as such.

Q. Is that the only reason you know he was a sea captain, simply from his title? A. Yes, sir.

Q. Is Mr. Van Eck, the other surveyor, a captain?

A. I do not know.

Q. What was his business, as far as you know?

A. He was representing the Hamburg Underwriters.

Q. Did those gentlemen come together when the survey was made?

A. Yes, sir, they came to see the vessel in drydock.

Q. Did you think the change in the stowage was necessary? A. No, sir.

Q. Did you notice any difference in the way the vessel behaved [164] after the change was made on her way from Buenos Ayres to San Francisco from the way in which she had behaved before?

A. No noticeable difference.

Q. Did anybody else recommend the restowage of the vessel?

A. The surveyors appointed by the French consul advised also to restow the iron in the way I have described.

Q. Did they advise that the iron be spread more over the hold than it was before? A. Yes, sir.

Q. What is the document which I hand you now, Captain?

A. It is a certificate of seaworthiness delivered by the Consul of France at Buenos Ayres after the survey of Mr. Potel.

Q. Delivered to whom? A. To myself.

(Deposition of Pierre Lalande.)

Q. After you received the certificate of seaworthiness, what did you do?

A. As soon as the repairs were completed, and all the steps taken, I went to sea.

Q. Did anything happen on the voyage from Buenos Ayres to San Francisco?

A. No, sir; nothing in particular.

Q. When did you arrive in San Francisco?

A. On the 19th of November.

Q. To whom did you deliver the cargo after your arrival?

A. To Meyer, Wilson & Co. They had a bill of lading to order.

Q. In what places was the cargo delivered, and how much cargo at each place?

A. I delivered 94 tons of coke, and 664 tons of pig iron in San Francisco, and the remainder of the cargo of coke at Oakland pier.

Q. How many tons did you deliver in that remainder? A. 2,069 tons at Oakland wharf.

Q. Captain, I want to ask you again whether you have an opinion referring to the necessity of the change made in the stowage of the pig iron at Buenos Ayres? [165]

A. I found that it was better stowed as it was before.

Q. Why?

A. Because the cargo was stowed on the widest part of the hold where it could be taken.

Q. You are referring to the pig iron?

A. Yes, sir. If we could put the pig iron in trim it

(Deposition of Pierre Lalande.)

would be better to stow that cargo in the widest part of the ship, which is the center, but a vessel of the "Duc d'Aumale's" type being very hard to put down by the stern, we are compelled to take the cargo a little abaft of the widest part of the ship, which was done at Rotterdam. As it was restowed, we had a pile on the fore-part of the vessel, and we were compelled to take another pile right in the stern of the ship in a place where a heavy cargo would strain the vessel very much.

Q. In your opinion, was the strain on the vessel greater or less after the cargo was restowed in Buenos Ayres as compared with the strain as she was stowed in Rotterdam?

A. In my opinion, there was a heavier strain on her afterwards than there was before.

Q. How do the pumps, if you know, which are installed in your vessel, the regular pumps of the ship, compare with pumps in all French vessels of the same type?

A. All the pumps I have seen up to now were of the same type as those on board the "Duc d'Aumale."

Q. How do the pumps compare with the pumps in other French ships, as far as the size of the pumps is concerned?

A. The same size. I never exactly measured them.

Q. But your opinion is that they are of the same measurement? A. Yes, sir.

Q. How did the pumps behave when you worked them on the different occasions that they had to be

(Deposition of Pierre Lalande.)

used? A. They worked well.

Q. Captain, after the ship was leaking, and the leak was first noticed, and you used the pumps, can you tell us how much water per hour the ship was making? [166]

A. The water was rising in the hold about one centimeter every hour.

Q. And how much time was necessary for the purpose of pumping the ship out?

A. We pumped 20 minutes in the morning, and 20 minutes in the evening—40 minutes every day.

Q. Can you estimate or tell us how great the volume of water is, corresponding to a rise of one centimeter?

A. I never asked myself how much it was, but I think that one centimeter means about 500 or 600 liters. (After calculation.) One centimeter of water makes about six tons.

Cross-examination.

Mr. PAGE.—Q. Captain, how many tons were there altogether in your cargo when you left Rotterdam? A. About 2,660 tons.

Q. How many tons did you have in the lower hold?

A. 600 tons of pig iron, and a little less than two-thirds of the coke, which is equal to about 1,900 tons.

Q. That is, 1,900 tons altogether in the lower hold, or more?

A. About nineteen hundred tons altogether in the lower hold.

Q. How much would that leave in the between-decks?

(Deposition of Pierre Lalande.)

A. It would leave 760 tons in the between-decks.

Q. How do you ascertain the amount of that weight?

A. The space in a ship like the "Duc d'Aumale" in the between-decks is about one-third of the entire interior space of the ship.

Q. When you left Rotterdam, was the lower hold full up to the between-decks, or was there a space?

A. The lower hold was entirely full.

Q. And also the between-decks entirely full?

A. Yes, sir.

Q. In your opinion, a ship of the type of the "Duc d'Aumale," as I understood you, should carry about 800 tons in the between-decks as against 2,200 tons in the lower deck? A. Yes, sir. [167]

Q. And the reason, as I understand you, that the "Duc d'Aumale" was not loaded in that proportion was that her beams in the between-decks would not allow of her carrying a larger amount of cargo than she actually did?

A. She could not take any more in the between-decks.

Q. What was there to prevent her carrying more in her between-decks; were the beams not strong enough?

A. The beams were strong enough, but it would produce a strain greater on the ship.

Q. How did you get from Rotterdam to Brest? Under sail, or under tow? A. Under tow.

Q. You had good weather during all of that time?

A. Yes, sir; fair weather.

(Deposition of Pierre Lalande.)

Q. Were you sounding your pumps during that time every day? A. Every day.

Q. Was the ship making any water at all?

A. No water.

Q. After you left Brest, I suppose you kept on sounding your well every day?

A. Yes, sir; twice a day.

Q. And up to the time that the leak was discovered, had the ship made any water whatever?

A. None whatever.

Q. You kept your log regularly, of course?

A. Yes, sir.

Q. Your officers made the entries in the usual course?

A. The officers made the entries after every watch, and I go over it and sign it every day.

Q. This log-book of which you have spoken, does it correctly state the circumstances accompanying the voyage, and the weather, the sailing of the ship, and the distance travelled, as it purports to do?

A. Yes, sir.

Q. On what day did you discover the leak?

A. The 28th of September. [168]

Q. Up to that time there was no water at all in the well, as I understand?

A. A little water, but very little indeed.

Q. The ship was not making any water?

A. No, sir.

Q. Why didn't you keep any record at all of the soundings before that time in the log-book?

(Deposition of Pierre Lalande.)

A. The log-book does not show any amount of water because there was none to report, but at the end of each watch, the officer has written down "Pumps free."

Q. On what day did you leave Brest?

A. 24th of September.

Q. The weather from the time you left Brest up to the 28th day of September, when the leak was sprung, was as fine weather as it was possible to have at sea, was it not?

A. The two or three first days. After that we had a breeze starting at the west, going to southwest, getting fresh, and shifting to the northwest.

Q. But you had no stormy weather up to that time —up to the 28th? A. I have not examined the log.

Q. Look at your log, and tell us whether the weather was not the ordinary weather that a sailing vessel encounters without any stormy weather.

A. During the nights of the 26th and 27th we had bad weather.

Q. Describe the weather as it is given in the log.

A. From 8 o'clock to midnight of the 26th we had bad weather.

Q. Is this entry in your log correct: "From midnight of the 26th to midnight of the 27th, weather squally; nice breeze; swell; all sails set." In the second watch, "Squally weather; nice breeze; all sails set." "In the third watch, "Squally weather; nice breeze; all sails set." In the fourth watch, "Squally weather of little strength; a fine breeze; all sails set." In the next watch, "Squally weather; nice breeze;

(Deposition of Pierre Lalande.)

all sails set." Next watch, "Cloudy; fine breeze; a few squalls; all sails set." The next [169] day; "From midnight of the 27th to the midnight of the 28th." In the first watch, "Squally weather; strong rain; the wind blows to the southwest, and shifts to the northwest; gaff topsail and main-jib torn, royals and upper top-gallant sails and staysails and spanker taken in." In the next watch, "The same kind of weather; strong breeze; a large swell from the northwest; the top-gallant sails taken in; unbent the main jib; violent squalls; strong winds; heavy sea; set the top-gallantsails and mizzen staysail." Next watch, "Cloudy weather and squally; strong breeze; heavy sea from the west, northwest; the same sail as during the preceding watch." Next watch, "Squally weather; strong breeze; furled the mainsail at six o'clock." Next watch on the same day, "The same weather; very strong swell; violent squalls." The next day, "Midnight of the 28th to midnight of the 29th." In the first watch, "Fine weather; some squalls; strong breeze becoming less at the end of the watch." Second watch, "Fine weather; fine breeze; set the mainsail; royal, spanker and staysail." In the next watch, "Fine weather; fine breeze; all sails set." In the next watch, "Squally weather; the sea falls more and more; all sails set; tested the steam gear; found an increase of water in the hold; sounded 23 centimeters; cleared the pumps." In the next watch, "Fine weather, the breeze softens; all sails set." The next watch, "Fine weather; light breeze; all sails set."

(Deposition of Pierre Lalande.)

And on that day did you make any notation in your own handwriting on the log-book with reference to the discovery of water in the hold?

A. Yes, sir; I wrote at the foot of the log not to fail to sound at every watch, and to give an account to the captain; if the water rises slowly and regularly, they must pump in the morning at 7:20 and in the evening at 4'clock. [170]

Q. Does that log correctly state the facts as they occurred at the time with reference to the character of the weather? A. Yes, sir.

Q. During all of this time, or any part of this time, was your ship rolling? A. Yes, sir.

Q. Was that the natural roll of an ordinary ship in that kind of weather, or was it an extraordinary rolling?

A. The rolling was caused by this wind which started at the southwest, and shifted to the northwest, the sea having become very heavy by the cross seas, and when the wind shifted to the northwest, the wind decreased, and the vessel not being stayed by the sails rolled heavily.

Q. Is it not usual if a vessel rolls very heavily, that is more than is expected of her, to make an entry in the log that the ship has been rolling?

A. Generally, but it was neglected.

Q. Was there a laboring of the ship prior to the leak starting, which was unexpected or unusual?

A. Yes, sir; the day after that night, the wind shifted from the southwest to the northwest.

Q. Was the laboring of the ship upon that occasion

(Deposition of Pierre Lalande.)
very extraordinary?

A. The ship labored less than she did later after that storm at the Falkland Islands, but she did labor very much.

Q. Is it not usual for any ship to labor more or less in a cross sea without making water?

A. Certainly; the "Duc d'Aumale" itself did it many times, probably, but this time she sprang a leak.

Q. Then, that must have come from some weakness of the ship before she started, did it not?. There must have been some weakness.

A. I don't think so.

Q. How can you account for the ship springing a leak in weather which was fine, all excepting during one or two days at the most, and that weather not very bad, no storms? [171]

A. I cannot give any other explanation.

Q. Then the only explanation that you have to give is that the ship strained in this kind of weather, and started a leak. That is the only explanation you can give? A. Yes, sir.

Q. After the leak was started, how long did the good weather continue?

A. Variable weather, up to the storm that we had in the west of the Falkland Islands.

Q. About what date was that?

A. The 22d of November.

Q. There was no other bad weather, was there, up to that time?

A. We had one small gale in the latitude of Montevideo.

(Deposition of Pierre Lalande.)

Q. The rest of the time you had fine weather, had you not? A. Yes, sir.

Q. Now, the log records stormy weather on the page marked "From midnight of the 22d to midnight of the 23d of November." Up to that time, had there been any noticeable change in the amount of the water that the ship took in?

A. I have always noticed that the water was rising one centimeter every hour.

Q. What you mean is, that there was a uniform amount of water coming in to the ship each day up to the 22d of November, which amounted to about one centimeter per hour? A. Yes, sir.

Q. When the storm of the 22d came on, did it come on suddenly at midnight of that day, or was it coming on for some time on the previous day?

A. It came progressively. It began with north wind, the gale fell, shifting to the northwest and getting fresh.

Q. The storm really began to come on, then, on the last quarter of the 21st, namely from 8 o'clock at night to midnight? A. Yes, sir.

Q. And in the second quarter on the morning of the 22d, the discovery was made that the water had increased abnormally. What hour was that second watch?

A. From 4 to 8 o'clock in the morning of the 23d.

[172]

Q. And after that time, it was impossible, you say, to have any control over the water with the pumps.

A. We could not control the water, but we were

(Deposition of Pierre Lalande.)

making an examination of the pump-well.

Q. But you were unable to pump the water out excepting a small part of it? A. Yes, sir.

Q. You could not control it? A. No, sir.

Q. Now, Captain, during that time, when the leak increased so largely, what sail was your ship carrying? Can you tell by looking at your log?

A. The foresail and two lower topsails. We had lost the jib and lower staysails.

Q. How long before?

A. We lost the staysails at midnight, and the fore staysail between midnight and 4 o'clock.

Q. How many miles an hour were you making during that watch? A. About 4 knots.

Q. In what direction was the wind then?

A. Southwest.

Q. Was that a free wind or a head wind?

A. It was a head wind.

Q. Now, before this last storm took place, had the vessel been rolling very much?

A. Not much, excepting in a storm on the 5th of November.

Q. In your opinion, Captain, was the hole that was discovered in the ship's hold, and which was caused by the loss of a rivet, sufficiently large to account for the immense amount of water that got into the ship immediately that she began to have bad weather?

A. I think there was something else.

Q. Is it not your opinion from all that you have been able to ascertain, that the laboring of the ship caused the butt ends of the plates to separate or to

(Deposition of Pierre Lalande.)

open, and let water in between the plates?

A. I think that the ship made a little water by the butt ends.

Q. That little water that you speak of made by the butt ends added [173] to the water that would come in by the rivet hole, would those two together be sufficient to account for the immense amount of water that came in so rapidly when you struck the heavy weather? A. Yes, sir.

Q. Is it your opinion, Captain, that the water did actually come in in part by the rivet hole before arriving at Roy Cove? A. Yes, sir.

Q. And how large was that rivet hole in diameter or in circumference?

A. It was a rivet of 23 millimeters in diameter when the ship was new.

Q. Was it any larger after the ship became older?

A. No, sir, it was the same.

Q. Now, when the ship was making, as you said a little while ago, in your opinion, about one centimeter an hour of water, was it your opinion that at that time the rivet was already out?

A. The rivet was not out.

Q. Have you any opinion what it was that was causing the ship to leak up to the time that the rivet fell out?

A. My opinion is that the rivet started to get loose in the first storm of the 27th of September, and that the same rivet jumped out in the storm of the 23d of November.

Q. Now, after the ship reached Roy Cove, and was

(Deposition of Pierre Lalande.)

on the mud, and in the kelp, as I think you said, and after she left Roy Cove on her voyage to Montevideo, did she make water as she had been making water before? A. No, sir.

Q. Did she make any water at all? A. No, sir.

Q. Have you any reason to account for her not making water, excepting that the hole had been filled with kelp? A. Kelp and mud.

Q. Is it not more probable in your opinion that the reason she did not make water was because the mud had filled up the butt ends in such a way that no water would come in, and you did not have any [174] bad weather after leaving Roy Cove? A. No, sir.

Q. Can you account for the other rivets which you found to be defective after the vessel was put on dry-dock? A. It came from the straining of the ship.

Q. At the same time as the first one, or after she went on shore?

A. I cannot state positively if it was before or after.

Q. It is impossible to say when any of them happened. Nobody can say. A. That is so.

Q. How about plates that were dented? When was that done, and how did it happen, in your opinion, if you know?

A. It was found out in drydock, but I cannot state if it was caused by the stranding at Roy Cove, or by the working of the ship before.

Q. Now, when the ship did go on the drydock at Buenos Ayres, you found that the butt ends of the plates were more or less injured so that they would

(Deposition of Pierre Lalande.)

let water in, did you not?

A. The cement was broken at the butt ends.

Q. Was that all repaired before you started on your new voyage from Buenos Ayres? A. Yes, sir.

Q. Was it recemented, or was caulking done?

A. They did not caulk. They put a steel blade between the plate, and caulked that blade.

Q. And after that, there was not leakage in that?

A. No, sir.

Q. Did you have any bad weather after you left Buenos Ayres?

A. Yes, sir, but the ship was always running with a free wind.

Q. You, personally, would like to have avoided going around Cape Horn from Buenos Ayres, and would have preferred to go by way of Australia, would you not? A. Yes, sir.

Q. What was the reason of that?

A. To make more miles on account of the bounty.

[175]

Q. Did you go around Cape of Good Hope and Australia? A. Yes, sir.

Q. Do you recollect what the cost of repairs was at Buenos Ayres of the ship's hull so as to stop the leaking? A. No, sir; I don't remember that.

Q. Do you remember that the repairs that were necessary to stop the leaking did not cost more than \$400 paper money? A. No, sir.

Q. Look at the document, to be marked Libelant's Exhibit "A" and state what it is (handing).

A. It is a general survey of Captain Paoli and the

(Deposition of Pierre Lalande.)

engineer Potel, appointed by the French Consul.

Mr. PAGE.—I will offer this document in evidence and asked to have it marked Libelant's Exhibit "A."

(The document is marked Libelant's Exhibit "A.")

Q. You said, I think, that in accordance with the advice of these gentlemen, you changed the stowage of the pig-iron, so that the pig-iron in the lower hold, instead of being stowed all together, was spread over the lower hold of the ship. Did the surveyors who so advised you state that the reason for this was that the ship had strained too much on the first part of the voyage when the iron was all in one place?

A. Yes, sir; I said that.

Q. Captain, I understood you to say that it was necessary to place 600 tons of iron back of the main hatch in the lower hold in order to permit of the rest of the ship being filled up with the coke. Is that right? Did I understand you right? A. Yes, sir.

Q. What would have been the effect, if you had placed more of the iron in the between-decks?

A. The ship would have had the proper stability to have placed more than 60 tons of pig iron in the between-decks.

Q. But in that case, would not the ship have had more nearly a third of the cargo in the between-decks, and two-thirds in the [176] lower hold than in the other way which you actually followed?

A. I never said that it was necessary to put one-third of the cargo in the between-decks.

Q. But would that not have been the fact, that you could have secured one-third of the weight of the

(Deposition of Pierre Lalande.)

cargo in the between-decks by putting some more of the pig-iron there than by leaving it all in the lower hold excepting 60 tons?

A. The ship must have a good stability to go to sea, and also having a cargo well stowed in case of rolling.

Q. If you had put some more of the iron in the between-decks, could you have carried as much of the coke as you did? A. Yes, sir.

Q. How do you arrive at the quantity of cargo that there was in the between-decks, and the quantity that there was in the lower hold, if you did not join the ship until it was nearly loaded?

A. According to the plan of the cargo that was handed to me, and also the particulars that they gave me.

Q. Were the particulars given to you in writing, and by whom?

A. The information given by the overlooker.

Q. What information did he give you?

A. He told me exactly how the cargo was stowed.

Q. Did he give you the number of tons in the lower hold, and the number of tons in the between-decks?

A. Yes, sir, as far as the pig-iron was concerned.

Q. How about the coke?

A. Knowing, myself, that the space of the between-decks being one-third of the whole capacity of the ship, and the pig iron taking already a certain amount of space in the lower hold, I calculated that there was a little more than one-third of the cargo in the between-decks, about 700 tons.

(Deposition of Pierre Lalande.)

Q. Do you know what is the cubic capacity of your between-decks? [177]

A. I have not the figures in my memory.

Q. Where have you those figures?

A. I have got them aboard.

Q. Did you consult them for the purpose of ascertaining how much cargo you had in the between-decks?

A. Yes, sir, but it was not necessary, as the cargo was loaded at that time.

Q. Have you the information now on board of your ship showing what the cubic capacity of the different holds is? A. I think so.

Q. What are they in; in a book, or letter, or the ship's papers? A. In the ship's papers.

Mr. PAGE.—I would ask that that document, whatever it is, be produced.

Mr. HENGSTLER.—We can produce that document.

The WITNESS.—Anyhow, we could give you the total cubic capacity of the ship. We have a book here which gives the total cubic capacity of the ship.

Mr. PAGE.—I want the two separate.

Mr. HENGSTLER.—Q. Is there anything in the ship's papers to show what the cubic capacity of the between-decks, and the cubic capacity of the hold separately are?

A. I don't know if in the ship's papers they give the cubic capacity of the between-decks and the lower hold separately.

Mr. PAGE.—Q. Where do you get the information

(Deposition of Pierre Lalande.)

as to which you have testified with reference to the capacity of the two separate things?

A. I have seen myself on board of other ships of the same type as the "Duc d'Aumale."

Q. What have you seen?

A. I have calculated the cubic capacity of the lower hold and the between-decks.

Q. In what way? Have you taken the measurements yourself? A. Yes, sir.

Q. On what ship?

A. The French ship "La Perouse." [178]

Q. What connection had you with that ship?

A. I was second mate, and mate on board.

Q. As second mate and mate, you have measured off the between-decks and also measured off the hold? A. Yes, sir.

Q. What was the measurement of that ship?

A. I don't know exactly.

Q. What is the beam or width of your ship at the widest part? A. A little more than 12 meters.

Q. What is her length?

A. 85 meters in the keel.

Q. What occasion was there for your measuring the "La Perouse"?

A. In my spare time, in order to instruct myself.

Q. Since you have been in San Francisco, in any spare time, have you measured the space in the "Duc d'Aumale"? A. No, sir.

Q. Now, go back to Buenos Ayres. Had you any communication with the shippers or owners of the cargo of the ship with reference to what should be

(Deposition of Pierre Lalande.)

done with it? A. No, sir.

Q. You had none yourself? A. No, sir.

Q. Did you have any instructions from the owners of the ship to sell the cargo? A. Yes, sir.

Q. Was that by cable? A. Yes, sir (producing).

Q. Do you refer to the cable of April 28th?

A. Yes, sir.

Q. Does not that cable refer only to a discharge and *sail* of enough of the coke to make the vessel lighter in order to go to San Francisco?

A. The telegram to which I refer mentions also the sale of all the cargo.

Q. I will show you the telegram of April the 28th, and ask you to say whether that refers to anything excepting the sale of a portion of the cargo?

A. It refers to the lightening of the vessel, and selling a part of the cargo, and afterwards to a sale if more advantageous. [179] I have interpreted the cable to mean the sale of the whole cargo.

Mr. HENGSTLER.—Q. At the time you received it, you interpreted the cable to mean the sale of the whole cargo? A. Yes, sir.

Mr. PAGE.—I will read into the record the cable referred to which is in the following words:

“In accord with experts act for the best looking to the eventuality of moving to San Francisco with an auxiliary pump or a lightening of coke and sale if more advantageous.”

It is signed by the owners of the ship.

Q. Now, Captain, I ask you the question, if all the coke had been sold, would you have gone to San

(Deposition of Pierre Lalande.)

Francisco with nothing but the 600 tons of pig iron?

A. I don't know. I had to await the instructions of my owners.

Q. You did not hear anything from your owners regarding taking another kind of cargo from Buenos Ayres to San Francisco? A. No, sir.

Q. How large a place is Buenos Ayres?

A. A little more than a million, or so.

Q. Had you ever been there before? - A. No, sir.

Q. Are there any foundries there, or iron works that use coke?

A. I did not hear anyone speak of them.

Q. Did you inquire to find out whether there were foundries when you spoke about selling the coke?

A. I spoke to Mr. Cristofsen.

Q. Your consignee?

A. Yes, sir; and I went with him to different merchants.

Q. How long was the coke under water?

A. From the 21st of November up to the 17th of February, about.

Q. How much was in the ship's hold during that time?

A. When the ship was put afloat again, it was about 15 feet. [180]

Q. So that about 15 feet of the coke was submerged all the time?

A. 15 feet from the bottom of the ship up.

Q. That would be 15 feet of the cargo, would it not? A. About 13 feet.

(Deposition of Pierre Lalande.)

Q. And when this cargo was discharged at Buenos Ayres it was taken to warehouse?

A. No, sir; in an empty place.

Q. Out in the open? A. Out in the open.

Q. Do you know who took it out, who discharged it? A. Gavassa & Co.

Q. Was the discharge paid for at the rate of so much a ton? A. Yes, sir.

Q. Was the reloading of the ship paid for at so much a ton? A. Yes, sir.

Q. So that the people who handled the cargo, handled it and were paid for it in its wet condition with all the additional weight? A. Yes, sir.

Q. Do you know what the expense was?

A. I don't remember exactly.

Q. Captain, did I ask you, or did Mr. Hengstler ask you, whether you had ever superintended the loading of a cargo of this kind before? A. No, sir.

Q. You never have? A. No, sir; I never have.

Q. How long have you been going to sea?

A. I have been going to sea about 8 years.

Redirect Examination.

Mr. HENGSTLER.—Q. Captain, was there any flaw on the between-decks of your vessel during this voyage that we speak of here?

A. No, sir, only an alleyway on the side.

Q. What was the coke stowed in the between-decks resting on?

A. On the coke which was in the lower hold. The ship was stowed [181] solid.

(Deposition of Pierre Lalande.)

Q. When the ship was in drydock at Buenos Ayres, did you yourself inspect the damage to the ship?

A. Yes, sir.

Q. I think you stated this morning that in your opinion the leak of the ship was produced partly by the rivet hole spoken of here, and partly by some defect in the butt ends, did you not? A. Yes, sir.

Q. In your opinion, how did the inflow of water through that leak compare with the quantity of water which entered the vessel through the butt ends between the plates?

A. The water could only enter in a small quantity by the butt ends, because when the cement was gone, there was still a little caulking, and the water was stopped by the butt straps inside of the vessel.

Q. How are these butt straps located with reference to the plates?

A. The plates touched each other by the end, and the butt straps cover the seams, and join solidly the two plates with rivets.

Q. Of course, this missing rivet was replaced in drydock in Buenos Ayres, was it not?

A. Yes, sir.

Q. And what was done there with the loose rivets that you testified to?

A. Several of them were replaced, and others being less damaged were caulked.

Q. What was your relation to the French Consul after you arrived at Buenos Ayres?

A. As soon as I arrived at Buenos Ayres, I gave him full particulars of the vessel's situation. I

(Deposition of Pierre Lalande.)

handed to him my reports and the Consul himself appointed two surveyors to make a general survey of the vessel.

Q. Why did you apply to the French Consul?

A. Because it was my duty to do it.

Q. Your duty under the French law?

A. Yes, sir.

Q. Had you any right under the French law to do anything without [182] authorization by the French Consul in Buenos Ayres?

A. No, sir; the Consul has a right to interfere for all that concerns matters of general average.

Q. That refers, does it not, of course, to repairs to the vessel?

A. Yes, sir, for all matters concerned.

Q. Does it refer to the discharge of the cargo, and warehouse, and reloading of the cargo?

A. Yes, sir, I took in my cargo after being ordered by the surveyors of the Consul to do so.

Q. With reference to this bid of Gavassa Bros. To whom was that bid made? A. At the Consul's.

Q. And who accepted it? A. Yes, sir.

Q. What is this paper which I now hand you (handing)?

A. It is an abstract of the minutes of the French Chancellerie at Buenos Ayres concerning the adjudication of discharging, warehousing and reloading of the cargo of coke.

Q. By whom is this document signed?

A. By the French Consul at Buenos Ayres.

Q. That came from the ship's papers?

(Deposition of Pierre Lalande.)

A. Yes, sir.

Mr. HENGSTLER.—I offer it in evidence.

(The document is marked Respondent's Exhibit 8.)

Q. Now, Captain, Mr. Page asked you with reference to a cable which you received from your owners while you were in Montevideo, and which seems to be dated the 27th of April. You know what cable I mean? A. Yes, sir.

Q. Please state what you understood by this cable.

Mr. PAGE.—He has already stated that. He says he understood it meant that he was to try and sell the whole cargo, and I read the whole cable into the record.

Mr. HENGSTLER.—That is all right, if he said that. [183]

Recross-examination.

Mr. PAGE.—Q. After your ship got to Buenos Ayres, did you receive any cable instructions of any kind in regard to selling your cargo there?

A. No, sir.

Q. And after that time, you did not attempt to do anything there. You were satisfied with what you had already done? A. Yes, sir, I tried again.

Q. Alone, or in company with somebody else?

A. Always with Mr. Cristofsen, and Mr. Vie, Inspector for the Underwriters.

Q. Did you go to any foundries, or did you simply go to some merchants?

A. I went to see the merchants only, and a civil engineer promised to help me. He told me two days

(Deposition of Pierre Lalande.)

later that there was nothing to be done.

Q. What was the name of the engineer, do you remember?

A. I do not remember at present—Andre.

Q. What countryman was he, a Frenchman?

A. Yes, sir; a Frenchman.

Q. Was he in business there?

A. I think he was employed in the English Railway Company.

Mr. PAGE.—It is understood that if there is anything that we want to recall Captain Lalande for after looking at the log, we can recall him?

Mr. HENGSTLER.—Yes.

Deposition of Alphonse Rio, for Respondent.

ALPHONSE RIO, called for the respondent, sworn.

Mr. HENGSTLER.—Q. What is your business?

A. I am a shipmaster, acting overlooker of the Compagnie Maritime Francaise. [184]

Q. What are your duties as such overlooker?

A. In Europe, when a vessel of our company arrives, we proceed at once to the harbor where she is. We help the captain to send the crew away, and take charge of the vessel while she is in port, overlooking the cargo and general repairs in the harbor, and of course when she goes in drydock we take great care to see that everything is in order.

Q. Have you any duties with reference to loading the vessel?

(Deposition of Alphonse Rio.)

A. Yes, sir; one of our first duties is to see that the cargo is well stowed.

Q. How many such overseers have your company?

A. There is only one overlooker, and generally two acting overlookers who are shipmasters on furloughs.

Q. And who is the chief superintendent?

A. Captain Plisson, who had charge of the "Duc d'Aumale" when she was at Rotterdam.

Q. Do you know Captain Plisson yourself?

A. I do.

Q. How long have you known him?

A. I have known him for 12 years.

Q. Does he go to sea, or does he attend to his duties as overseer exclusively?

A. Yes, sir; he does not go to sea at all.

Q. You do not know of your personal knowledge what Mr. Plisson did in Rotterdam with reference to the "Duc d'Aumale"?

A. Yes, sir, I do, because—

Mr. PAGE.—Q. Were you there?

A. No, sir; but he told me.

Q. That is not your personal knowledge. That is what somebody else told you.

A. He himself told me. I will explain why he told me.

Q. No, never mind that.

Mr. HENGSTLER.—We will have to take Mr. Plisson's deposition in regard to that.

Q. Do you know what the duties of Captain Plisson were with reference with the "Duc d'Au-

(Deposition of Alphonse Rio.)

male" while she was at Rotterdam. What were his duties?

A. I described them when you asked me what was the [185] duty of an overlooker in port.

Q. Are you familiar with the construction of the "Duc d'Aumale"?

A. Yes, sir; I have been surveying one of the same type of vessels when she was being built, and I took charge of the vessel as her captain for four years.

Q. What was her name?

A. "Admirale de Cormulier." When I left her, I took in charge the same type of vessel, the "Surcouf," both vessels being built in the same yard as the "Duc d'Aumale" and of the same type.

Q. How do the pumps which are installed in the "Duc d'Aumale" compare with the pumps in the other two vessels?

A. They are exactly the same.

Q. From your familiarity with this type of vessel, are you able to calculate approximately the volume of water which would correspond to a rise of one centimeter in the hold of this vessel?

A. I can within at least about 100 meters more or less.

Q. What, in your opinion, is the volume of water corresponding to an increase to the height of one centimeter?

A. I think it will be between 1,400 liters, and 1,600 liters. I can make a calculation right now.

Q. What it is in tons of water?

(Deposition of Alphonse Rio.)

A. One ton and a half. One ton of water is 1,000 liters.

Q. In what time would that ton come in?

A. In one hour. The Captain said this morning that the water rose in the hold about one centimeter per hour.

Q. I hand you the stowage plan of the deck, respondent's Exhibit 7. You are familiar with it. You have examined it? A. Yes, sir.

Q. You have had experience in the towage of vessels? A. Yes, sir.

Q. How long have you had experience?

A. I have been ten years master, and I was six years mate before. [186]

Q. In your opinion, was this vessel properly stowed when she left Rotterdam? A. Yes, sir.

Q. What is your opinion based upon; have you any reasons for your opinion; if so, state them.

A. Yes, sir; she could be better stowed, if the pig iron was stowed in the center of the vessel where she is the widest, but in that case, the vesssl having to take a very light cargo of coke, her holds could not be full, because she would be too much by the head. For that reason, they had to stow the pig iron a little abaft the center of the vessel, but in this case the pig iron being stowed right between the main-hatch and after-hatch, it was where the vessel was widest aft of the center of the vessel, and it could not be otherwise. The coke in this case is like ballast on board of other ships. If the vessel had to take a full cargo of coke, she would have to take ballast, and she would

(Deposition of Alphonse Rio.)

have to take about the same amount in weight as the quantity of pig iron she had in, about 600 tons, and that ballast should have been taken in the after-part of the ship, in order to fill her holds with coke; and about the stability of the vessel, it was a good stowing because the coke being a very light cargo, the center of gravity of the vessel is placed very high.

Q. You mean it would be placed very high if it were only coke? A. Yes, sir.

Q. Or it is placed very high as it is?

A. As it is now, it is placed as it ought to be, but if it was with a light cargo like coke, the center of gravity of the vessel would be placed very high. The pig iron stowed in the lower part of the vessel brings lower the center of gravity and gives stability to the vessel.

Q. Do you think it would have been an improvement on the stowage of the vessel if more pig iron was placed in the between-decks than [187] was placed in this case? A. No, sir.

Q. Why not?

A. Because placing more pig iron in the between-decks you raise again the center of gravity, and the stability of the vessel is not sufficient.

Q. You know that one Mr. Van Eck in Buenos Ayres recommended when the vessel was restowed, that the pig iron should be distributed more over other parts of the vessel than it was in this case. What is your opinion with reference to this recommendation?

(Deposition of Alphonse Rio.)

A. If I had been master on the vessel, I would not have obeyed that recommendation. First, they stowed the pig iron in the fore part of the ship, and in doing so, to balance the vessel they had to stow a lump of pig iron right in the stern of the vessel. I saw it here in San Francisco.

Q. What is your objection to stowing pig iron in the stern of the vessel?

A. The stern of the vessel is like a wedge, and with any cargo at all in the vessel, the vessel being light, and the stern being a wedge, there is a weight pressing the vessel down in the stern, and the vessel is only held straight by the keel, and their consolidation, but the vessel being light the stern tends to go down in the water all the more when you put some cargo in that place, there is a deformation of the vessel.

Q. Was the stability of the vessel affected by the stowing of the heavy pig iron in the stern of the vessel?

A. The stability is not affected, but when a ship labors under great strain in that heavy weather, she feels it all the more when the cargo is placed on the stern or on the fore part of the vessel. Both parts of the ship are very much strained when you put heavy cargo there.

Q. If I understand you correctly, the stability is less if you place the heavy part in the stern or the forecastle. [188]

A. No, sir; the stability is the same.

Q. But it has an effect upon the straining of the vessel?

(Deposition of Alphonse Rio.)

A. Yes, sir; the vessel is straining very much when a heavy cargo is stowed on the after part of the vessel.

Cross-examination.

Mr. PAGE.—Q. And the same effect more or less is felt if there is a heavy weight stowed in the vessel abaft the middle place which you said would be the best place?

A. There is more strain than if the cargo was stowed in the center, but very little less because the vessel is very wide on that part.

Q. But in any case, the nearer the middle such a heavy weight would be placed in your opinion the better the stowage would be?

A. The nearer the center, the better the stowage.

Q. And the only objection there was in this case to stowing the heavy part of the cargo in the middle of the ship was that if you stowed it there you could not have carried as much cargo of coke as you otherwise did?

A. It is the only objection, which objection is the same for every ship.

Q. If the heavy weight had been more near to the middle, the straining would have been less; how much less you could not tell? A. Very little.

Q. Still you say it would be better stowage?

A. It would not be better stowage, but the strain would be a little less; very little.

Q. Do you recognize that there is any rule affecting stowage which requires the cargo in the between-decks to be not less than one-third of the whole?

(Deposition of Alphonse Rio.)

A. For heavy cargoes. For cargoes of the same kind and very heavy, it is the general rule to stow one-third of the cargo between-decks, and two-thirds in the lower hold, but this is not compulsory with every ship. It is the difference in the [189] building of the ships. Some ships are narrower and some wider. Some roll very much, and some a little.

Q. The wider the ship is, the more stiff she is. Is that not the rule with heavy cargo in her?

A. No, sir.

Q. If a ship is a narrow ship, is she not naturally crank?

A. Yes, sir; she needs a great deal more cargo in the lower hold.

Q. If a ship is wide, she is less crank?

A. Yes, sir.

Q. Therefore, she is stiffer than a narrow ship?

A. It depends on the cargo you put on board.

Q. Without any cargo?

A. If she is wide, she can go without any ballast in still water.

Q. If a ship is wide enough to be a stiff ship, the more heavy cargo you put in the lower hold, the stiffer she is necessarily?

A. Wide does not mean necessarily a stiff ship. I know vessels that are very wide and that are not stiff at all. I call a stiff ship a vessel that generally rolls abruptly.

Q. That is the result of stiffness, is it not?

A. When she rolls abruptly, yes.

(Deposition of Alphonse Rio.)

Q. That is the result of the cargo that it put in her?

A. It depends on the character of the ship very often.

Q. It depends more on the cargo that is put into her?

A. Of course, when there is too much difference between the weight in the lower hold and the between-decks.

Q. Do you know the cubic capacity of the between-decks of the "Duc d'Aumale"?

A. I could not say exactly.

Q. Do you know the cubic capacity of the lower hold?

A. No, sir. I think the lower hold is to the whole hull as two to three.

Q. In other words, the between decks is about one-third more? Yes, sir. [190]

Q. So that if a ship is fully laden from the floor up to her deck, with the same kind of cargo, she is carrying one-third in the between-decks, and two-thirds in the lower hold? A. Yes, sir.

Q. Where you have a very large weight like 600 tons covering a very small floor space on board of the ship, does that not necessarily strain the ship when all the rest of the floor space of the ship is covered with a lighter kind of cargo?

A. Do you refer to this plan of the stowage of the "Duc d'Aumale"?

Q. Yes. I refer to the space that was occupied ac-

(Deposition of Alphonse Rio.)

cording to that plan of 600 tons of pig iron.

A. That small space was about 63 feet long—20 meters.

Q. How high was it?

A. I could not say. I did not see it.

Q. How wide?

A. About 12 meters. It was 9 meters at one end, and 11 meters at the other.

Q. The height could be calculated, could it not, by the size of the pig iron? A. Yes, sir; it could be.

Q. Now, I ask you after you have made that explanation, whether all of that iron being in that comparatively restricted space did not create a greater strain on that part of the ship than the rest of the cargo did, which was a light material over the ship?

A. No, sir, I don't think so.

Q. Supposing that you placed a comparatively similar amount of pig iron on one end of this table, don't you think that the strain would be a great deal more on the supports of this table than if you spread it over the table?

A. I do not accept this comparison with a vessel. A table reposes on the floor, and the vessel is resting on the water all over her hull. I will not accept that comparison of a table and a vessel.

Q. You said a few moments ago that to place a very much smaller [191] amount of pig iron nearer the stern of the ship had the effect of pressing her down, and causing her to labor and strain?

A. Yes, sir.

Q. Yet you will not admit that a much greater

(Deposition of Alphonse Rio.)

amount of pig iron placed a few feet forward where the ship is wider will effect no strain upon the ship in heavy weather. Is that so??

A. No, sir, it is not. The pig iron stowed in the stern part of the vessel was stowed where the vessel had about 9 feet wide.

Q. That was a very small amount of pig iron.

A. Yes, sir, it was. I cannot say how much it was.

Q. It was a very small amount, 9 feet?

A. 9 feet wide, but about 10 to 12 meters long, and about 5 feet high. This pig iron, as I told you, on the "Duc d'Aumale," which we refer to, was stowed where the vessel had 8 meters at one end, and 9 meters at the other end of the pile. The vessel was supported by a great deal of water underneath.

Q. Can you tell from the stowage plan, how wide that pile of pig iron was—across the ship, I mean?

A. No, sir; I told you I have been master of the same kind of ship as the "Duc d'Aumale." I know where the pig iron was stowed by the plan; and I know the dimensions pretty accurately of the vessel where I have been master.

Q. You do not know whether the pig iron was stowed from side to side of the ship, or whether there were passages in between? A. It must be—

Q. You do not know?

A. The surveyor's report said—

Q. Never mind what the report said.

A. I only take it from the plan.

Q. You cannot tell from the plan anything excepting the comparative length of the pile?

(Deposition of Alphonse Rio.)

A. Yes, sir.

Q. And the height?

A. And I am sure the pig iron was stowed from [192] side to side. It could not be otherwise.

Q. That is only guesswork?

A. Yes, sir, because the pile was covered with boards and mats separating the coke from the pig iron.

Q. That you assume also?

A. I have seen them here.

Q. But not at Rotterdam?

A. The surveyor in his report said—

Q. Never mind what the surveyor said. Have you ever carried cargoes of this nature, pig iron and coke, in your own experience?

A. No, sir, I have only overlooked one. I never carried such a cargo.

United States of America,

State and Northern District of California,

City and County of San Francisco,—ss.

I, James P. Brown, Esq., a United States Commissioner of the Northern District of California, do hereby certify that the reason stated for taking the foregoing depositions is that the testimony of the witnesses Y. Perrot, Pierre Lalande and Alphonse Rio is material and necessary in the cause in the caption of the said depositions named, and that they are bound on a voyage to sea and will be more than one hundred miles from the place of trial at the time of trial.

I further certify that on Tuesday, December 29th,

and Wednesday, December 30th, 1908, at 10 o'clock A. M., I was attended by Charles Page, Esq., of the firm of Messrs. Page, McCutchen & Knight, Proctor for the Libelants, L. T. Hengstler, Esq., Proctor for the Respondent, F. Henry, Esq., who, by stipulation was sworn to act as Interpreter, and by the witnesses who were of sound mind [193] and lawful age, and that the witnesses were by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in said cause; that said depositions were, pursuant to the stipulation of the proctors for the respective parties hereto, taken in short-hand by Clement Bennett, and afterwards reduced to typewriting; that the reading over and signing of said depositions of the witnesses was by the aforesaid stipulation expressly waived.

Accompanying said depositions and annexed thereto and forming a part thereof are Libelants' Exhibit "A" and "Respondent's Exhibits 1 to 7," both numbers inclusive, introduced in connection therewith and referred to and specified therein. Such exhibits are endorsed by me with my official title.

I further certify that I have retained the said depositions in my possession for the purpose of delivering the same with my own hand to the United States District Court for the Northern District of California, the Court for which the same were taken.

And I further certify that I am not of counsel nor attorney for any of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto subscribed by hand at my office in the City and County of San Francisco, State of California, this 15 day of January, 1912.

[Seal] JAS. P. BROWN,
U. S. Commissioner, Northern District of California,
at San Francisco.

[Endorsed]: Filed Jan. 15, 1912. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [194]

Testimony Taken in Open Court.

(Title of Court and Cause.)

Honorable R. S. BEAN, Judge.

Tuesday January 16th, 1912.

Wednesday, January 17th, 1912.

Thursday, January 18th, 1912.

COUNSEL APPEARING.

For the Libelants: IRA A. CAMPBELL, Esq., of
the firm of Messrs. PAGE, McCUTCHEON,
KNIGHT & OLNEY.

For the Respondent, L. T. HENGSTLER, Esq.

(This libel now came on for hearing in its regular order on the calendar, and the following proceedings were had:) [195]

Mr. CAMPBELL.—If the Court please, this is a suit brought by Meyer, Wilson & Co., who are the holders of bills of lading on a cargo of coke and pig iron which was shipped on board the French bark “Duc d’Aumale” from Rotterdam in September, 1907.

The testimony will show that she left Rotterdam, I think, about the 19th or 20th of September and towed from there down to Brest, and left Brest on her voyage for San Francisco on the 24th of September.

The COURT.—Of last year?

Mr. CAMPBELL.—This all appears in the depositions which are filed. After she had been out some two days, the 26th, she got into what we call fair weather and the breeze increased a little bit during the 27th, the 28th and the 29th, but she continued in what libelants contend to be fair weather. During that time however she sprung a leak, so much so that the captain found it necessary to work his pumps 40 minutes a day to keep her free from water. She did not turn back however to a port of refuge for the purpose of repairs, but continued on her voyage, and thereafter, when she was in the vicinity of the River Platte off of the southern end of the South American Continent in a very stormy region she encountered much severer weather than she had on the 28th and 29th.

It appears from the record that during all this time the leak continued, and the weather at that time was so bad apparently that he could not get at his pumps to work them. Finding the water increasing in the hold he called a consultation of his crew and they decided to run for the Falkland Islands, which I think were somewhere to the southeast of the position he was in at that time. He then got his vessel before the wind and made for the Falkland Islands. While she was running [196] in that way, he says,

the leak was less than it was then when he was working her in a head wind, which we contend becomes a very significant point in the case, showing the source of the leak and the cause of the leak. She reached the Falkland Islands and was beached. There was no wrecking apparatus at that place, and after communicating with his owners by mail he left and went to Montevideo by steamer; there, after being in cable communication with his owners he went down to Punta Arenas in the Straits of Magellan and joined a wrecking outfit "which went from that point over to the Falkland Islands. The vessel was eventually recovered. The water was pumped out of her and she was towed by this wrecking tug to Montevideo. That was in April. So that she had been filled with water from December to April. Naturally this coke became thoroughly saturated with salt water during that period. From Montevideo she was taken down to Buenos Ayres and was there docked. Surveys were held and the surveys showed a certain character of damage; for instance, it was revealed that a rivet was gone from a position about a foot from the keel and a meter forward from the mizzenmast of the vessel. It also appeared that her butts worked and as a result leaked, so that it became necessary to put in a steel blade.

It also appears from the survey reports which were offered in the depositions that they found 200 to 300 rivets leaking throughout the bottom of the vessel. There was also some other damage from her being ashore, a certain bent plate about her stern which unquestionably came from the damage ashore.

She was then reloaded. After completing the repairs which cost something like \$400 she started on her voyage to [197] San Francisco. Instead of coming around by the way of Cape Horn she came by the way of the Cape of Good Hope, one reason being as the master stated, that by going the longer distance he would earn more bounty under the French law. She eventually arrived in San Francisco and the consignees of the cargo refused to pay the freight on it. The cargo was subsequently sold at public auction. Part of the coke brought a cent a ton and part 5 cents a ton over and above the freight and the duty.

The loss for which the libelants are claiming is the loss arising from the damage to the coke by reason of the salt water saturation. We are also asking for a recovery because of the loss of the market on the iron, and I think some slight damage to the iron. There is also a general average statement which I do not think has been completed as yet, but will be made up at the conclusion of this case in which these consignees under the bond that they gave, will probably be required to contribute in general average to the expenses incident to the recovery of the vessel after her getting into trouble at the Falkland Islands.

Our contention of course is that the evidence shows that the vessel was unseaworthy when she started on her voyage; that in the eyes of the law she was unseaworthy because of the fact that she was not properly loaded and was not sufficient in her hull to stand the ordinary perils or the ordinary incidents which would be encountered on the voyage. It is on

these grounds that we ask recovery in this suit.

Mr. HENGSTLER.—I think, Mr. Campbell, it is fair to add here that there are two suits before the Court. There is [198] another suit brought by the owners of the ship against Meyer, Wilson & Co. for recovery of the freight; that no part of the freight has been paid by Meyer, Wilson & Co. The principal issues in both cases are the same. I suppose that the defense which is made to the recovery of the freight involves the same defense of unseaworthiness of the vessel. The two actions are consolidated.

Mr. CAMPBELL.—That is true. I think the testimony in the one suit will be the testimony in both suits. I have agreed with Mr. Hengstler that if at the close of my testimony he finds he wants to call anyone in rebuttal, that he may have the opportunity of doing so, and if it is not convenient before your Honor leaves I am willing it should be taken by deposition and made a part of the record.

The COURT.—Very well.

Mr. HENGSTLER.—It may be necessary to rebut the testimony of the experts,—I believe they are all experts that are to be called, by depositions to be taken in foreign countries. It is understood between Mr. Campbell and myself that if I consider it necessary these depositions may be taken.

The COURT.—Very well.

Mr. CAMPBELL.—It is also understood that the testimony may be taken in shorthand and that the expense may be divided half and half?

Mr. HENGSTLER.—Yes. [199]

Testimony of Hiram Coalfleet Davison, for Libelants.

HIRAM COALFLEET DAVISON, called for the libelants, sworn.

Mr. CAMPBELL.—Q. What is your business?

A. Shipmaster.

Q. Are you at the present time master of any vessel, Captain?

A. Yes, sir, the "Lord Templeton."

Q. What character of vessel is she?

A. She is a bark.

Q. Wooden or iron or steel? A. Steel.

Q. A steel bark? A. Yes, sir.

Q. How many masts? A. Three.

Q. What is her tonnage? A. 2,048 tons.

Q. What is her deadweight capacity?

A. About 3,240 tons.

Q. How long have you been going to sea?

A. I have been going to sea since 1869.

Q. What was the last voyage that you have just completed? A. Between Newcastle and this port.

Q. Newcastle, New South Wales?

A. Newcastle, New South Wales and San Francisco.

Q. How long have you been a Master?

A. Since 1883.

Q. Since 1883? A. Yes, sir.

Q. In what character of vessels have you sailed?

A. In seagoing vessels, long voyage vessels.

Q. Long voyage vessels? A. Always.

Q. Have you ever been around Cape Horn, Captain? A. Yes, sir; only once.

(Testimony of Hiram Coalfleet Davison.)

Q. As master? A. As master.

Q. Have you ever been around there as a sailor apprentice? A. No, sir.

Q. Over what waters have you sailed?

A. Pretty nearly all parts of the globe. [200]

Q. Have you ever been in bad weather?

A. Occasionally.

Q. Have you ever been in the Atlantic trade at all?

A. Yes, sir, the first 8 or 10 years of my going to sea was in the North Atlantic trade.

Q. What character of weather ought you ordinarily to expect in the Atlantic Ocean during the months from September to November?

A. Well, sometimes you have pretty bad weather and sometimes it is not. All the winter weather is bad in the North Atlantic.

Q. Is that the kind of weather that you ordinarily expect to meet in the winter time in bad weather?

A. Yes, sir. We are always prepared to meet that weather at any time in the North Atlantic.

Q. What do you call bad weather such as you would expect to meet?

A. I am not very good in describing bad weather.

Q. You can describe to us something of the effect that you expect to have in a sea in bad weather?

A. Yes, sir, we expect to have a very bad sea.

Q. What effect does it have on the vessel. What is the nature of the sea that you expect?

A. In what way do you mean?

Q. Do you ever have any water on deck that would cause your vessel to roll?

(Testimony of Hiram Coalfleet Davison.)

A. We have water on deck most of the time in bad weather, that is, if the vessel is loaded. If she is light it is not there. Very often we have water on deck, that is, spray.

Q. Is it an unusual or extraordinary occurrence to have water come on the deck of a sailing vessel where she is loaded?

A. Oh, no. You have that if you have any wind at all. You have a little water on the deck. It may be spray. It does not amount to anything. [201]

Q. If you have ordinary bad weather that you expect to encounter, what water do you have on deck?

A. We have considerable on deck. A good deal depends upon the vessel. Some vessels are worse than others—wetter than others.

Q. What kind of a sail do you usually carry when you are encountering the bad weather that you ordinarily expect at sea?

A. Well, in bad weather in a gale of wind, her lower top-sails are usually the sails that we keep there. We keep them until they blow away. When the canvas won't stand it we do not have anything there.

Q. Captain, I want to show you a photograph. I think the record will show in this case that this vessel was what we call a three-masted bark, and while this is a picture not of this bark but a picture of the bark "Peru" I want to use it simply for a mere graphic illustration of some testimony. I will show it to Mr. Hengstler first. Now, Captain, I want you to name for me the sails on the foremast of that three-masted bark.

(Testimony of Hiram Coalfleet Davison.)

A. That is the foresail, and that is the lower top-sail (pointing).

Mr. CAMPBELL.—I will ask to have this marked for identification Libelants' Exhibit "A."

(The photograph is marked "Libelants' Exhibit 'A' for Identification.")

Q. Now, Captain, referring to "Libelants' Exhibit 'A' for Identification," I will ask you what you call the sail marked "No. 1" on the picture.

A. That is the foresail.

Q. And "No. 2" is what?

A. It is the fore lower top-sail.

Q. And "No. 3" is what?

A. The fore upper top-sail.

Q. The sail that would take the place of "No. 4" dropping down from the yard? [202]

A. That is the fore topgallant-sail; in that case she is a single topgallant-sail.

Q. And "No. 5" would be what?

A. Fore-royal.

Q. On the main mast what is "No. 6"?

A. That is the mainsail.

Q. And "No. 7"? A. The main lower top-sail.

Q. And "No. 8"? A. Main upper top-sail.

Q. And "No. 9"? A. Main topgallant-sail.

Q. And "No. 10"?

A. That would be the main royal.

Q. "No. 11" is what? A. The spanker.

Q. Then what would you call "No. 12" and "13," in the stay-sail?

A. "12" is the main topmast stay-sail.

(Testimony of Hiram Coalfleet Davison.)

Q. And "No. 13"? A. Main topgallant-sail.

Q. Now, Captain, when your ship is trimmed down for the kind of bad weather that you expect to meet at sea what sails do you usually carry?

A. We don't take the sails in until the bad weather comes, as a rule. With a gale of wind usually those two lower top-sails.

Q. If I may lead you, that is to say, that all the sails, the foresail, mainsail and topgallant-sails and royals are all furled? A. Furled.

Q. The upper top-sails are furled and you carry your lower top-sails alone? A. Yes, sir.

Mr. HENGSTLER.—And have the lower top-sails alone.

The COURT.—Q. What number would those be on this picture, "2" and "7"? A. "2" and "7."

Mr. CAMPBELL.—Q. State whether or not it was an unusual occurrence at sea to have to furl your sails so as only to carry your lower top-sails.

A. Yes, sir; it is a very common occurrence in bad weather in the North Atlantic in winter.

Q. What time of the year did you go around the Horn? [203]

A. I think it was October or November.

Q. You think it was October or November?

A. Somewhere about that time.

Q. Were you in command at that time?

A. Yes, sir.

Q. In what character of vessel?

A. She was a bark, very much like that one, like the picture (pointing).

(Testimony of Hiram Coalfleet Davison.)

Q. What was the name of it?

A. The "Battle Abbey."

Q. She is an old British bark, is she not?

A. Yes, sir.

Q. What was your port of departure?

A. We were going from Victoria to Cape Town.

Q. Did you come back in her? A. Yes, sir.

Q. You came back the other way?

A. I came back the other way.

Q. By the way of the Cape of Good Hope and the South Pacific? A. Yes, sir.

Q. Did you encounter any bad weather around the Horn during that voyage?

A. No, sir; we had fine weather all the way around.

Q. In running from the Pacific to the Atlantic during those months do you have a fair wind or head wind?

A. In those months we had more fair wind than we do head wind. It is the winter, the south winter when you have the most westerly winds, that is, the head winds going east.

Q. In the summer months around the Horn—

A. (Intg.) That is the southern summer.

Q. From September to April? A. Yes, sir.

Q. The prevailing winds are from west to east?

A. They are any way—yes, they are northwest to south southwest. [204]

Q. Would a vessel coming from the South Atlantic to the South Pacific around the Horn in those months expect to encounter head winds?

A. They expect to encounter them any time of the

(Testimony of Hiram Coalfleet Davison.)

year, more so in the southern summer.

Q. Have you ever carried a cargo of coke and pig iron in an iron vessel?

A. Coke and pig iron, not together. I have carried coke.

Q. State whether or not when you are compelled to shorten sail so as only to carry your lower top-sails, you would expect to have any water on the deck of your vessel if she were loaded.

A. I would expect to have a good deal, considerable.

Q. Would that be an unusual occurrence at sea?

A. No, sir, a very usual one.

Q. Now, Captain, I want to read to you some of the testimony given by the master of this vessel: "Q. Now, Captain, during that time, when the leak increased so largely, what sail was your ship carrying? Can you tell by looking at your log? A. The foresail and two lower top-sails. We had lost the jib and lower stay-sails."

If this vessel was carrying her foresail and her two lower top-sails, or was able to carry her foresail and two lower top-sails, I will ask you whether or not in your judgment, based upon your experience as a shipmaster, you would consider she was encountering weather that was any other than what might be expected on any voyage in the South Atlantic, or South Pacific, or around Cape Horn?

A. Well, we are liable to have fine weather any part of the season where we could only carry that sail even in the trade winds, not the regular trade

(Testimony of Hiram Coalfleet Davison.)

winds, but we have typhoons and cyclones there as well as anywhere else. [205] We are always expecting to have weather to take in sail at any time and any place.

Q. If you were in a typhoon or hurricane would you be carrying your foresail?

A. No, sir; it would not stay there very long if we did have it.

Q. Is it unusual occurrence at sea to lose your jibs or lower stay-sails?

A. No, sir; it is a very common occurrence.

Q. From the mere knowledge on your part that this vessel was carrying her foresail and her two lower top-sails, would that in your judgment indicate that she was encountering weather other than what she might expect on a voyage?

A. Well, if this means around Cape Horn, no. She would certainly expect that.

Q. I want to read you further from the testimony of the Master on page 11:

“Q. Now, go ahead and tell what happened next. A. We saw every day that water was increasing in the hold regularly, about one centimeter every hour. Q. What did you do with the pumps during that time? A. We pumped regularly, morning and evening. At 7:20 in the morning and 4:20 at night. Q. For how long a time each time? A. About 20 minutes each time. Q. Did you succeed in controlling the inflow of the water by this pumping? A. By pumping 40 minutes, we cleared the water from the hold. Q. How long did that go on? A.

(Testimony of Hiram Coalfleet Davison.)

Nothing happened particularly until the 22d of November. Q. Where was the vessel on that day? A. The vessel was about 49 degrees, 37 minutes south latitude"—I want you [206] to bear this in mind Captain—"and 66 degrees, 21 minutes west longitude."

Where does that place you with respect to the River Platte?

A. I don't know just the latitude of the River Platte now, but she would be to the east of the Horn, or not very far from the Falkland Islands.

Q. Not very far? A. No, sir.

Q. State whether or not she would be approaching what you might call the vicinity of the Horn?

A. Yes, sir; but she would be northward of the Horn, on the equatorial side.

Q. What character of weather might a vessel ordinarily expect in that vicinity during the month of November?

A. They have very nearly all kinds of weather there in that month or any other month in that latitude.

Q. State whether or not it would be an ordinary occurrence to commence to shorten sail to your two lower top-sails and foresail in that vicinity.

A. Yes, sir.

Q. It would be or would not be an ordinary occurrence? A. An ordinary occurrence?

Q. Yes.

A. Yes, sir; because the weather is very variable. You might have to shorten down to that more than

(Testimony of Hiram Coalfleet Davison.)
once in 24 hours; perhaps twice.

Q. I will go on:

"Q. Where was the vessel on that day? A. The vessel was about 49 degrees, 37 minutes south latitude, and 66 degrees, 21 minutes west longitude. On that date the weather was fine until 9 o'clock at night. The wind increased in force rapidly, and we had to take in all sails but the foresail, two lower top-sails, and the lower stay-sails. At 11 o'clock, the wind blew a storm, and the sea became heavier very rapidly. At 12 o'clock, in a gust, we lost the [207] top-mast stay-sail and the mizzen stay-sail. In a while the sea became tremendous, and we lost the fore stay-sail. The ship not being stayed by the sails we had lost, she rolled terribly. The decks were full of water. The decks being full of water, and the ship rolling heavily, we could not get the exact soundings. Q. Could you pump? A. No, sir, we could not pump. I went myself in the pump-well, and I saw there was an increase of water, but we could not pump because the bottom of the pipe at each rolling was dry, the vessel being on her side. Another survey was made at 4 o'clock in the afternoon, and we saw the same thing, the sea being still very heavy, and the wind shifting to the southwest, the ship in a cross sea. We wore the ship around at 8 o'clock. The sea was very high until the 25th of November at 8 o'clock A. M. On the 24th of November, coming around westerly at 2 o'clock

(Testimony of Hiram Coalfleet Davison.)

P. M., we wore the ship around to take a starboard tack. I ordered the pumps to be sounded by the carpenter when the ship was upright, and the carpenter reported that he found one meter and 25 centimeters in the hold, so that the water had increased rapidly since the morning. After the wearing of the ship, I set one watch to the pumps, and ordered an examination of the life-boats made to see that they were in order. At 6 o'clock, the wind freshened again, big seas coming from every part; the decks being always covered with water it was very difficult to work the pumps. At 6 o'clock, we found one meter, and 55 centimeters in the hold. At 6 o'clock, I called the crew aft and explained to them the situation, and we resolved to take refuge in the Falkland Islands for the [208] saving both the cargo and the ship. At the same hour we kept her off, and made for the Islands. Q. We do not need the further details until you get to the place where you beached the ship. A. That is a few hours later. Both watches were relieving each other at the pumps every half hour, so they were working continually, and I saw that the water did not increase so much while the ship was running before the wind."

Now, I will ask you, Captain, whether or not in your judgment the wind which he has detailed here was wind or weather that you might expect on a voyage around Cape Horn, in the vicinity of the Falkland Islands.

(Testimony of Hiram Coalfleet Davison.)

A. Well, that is the ordinary kind of weather that you might expect there.

Q. Is it a common experience or an uncommon experience at sea, to have the wind changed from one direction to the other?

A. It is a very common experience there because the wind and weather both change very quickly.

Q. Now, if you have had a gale of wind from one direction, say from the north or from the northwest, and that has worked up a sea running to the southeast, and your wind suddenly whips around so that it is blowing from the southwest, is that an ordinary occurrence or an unusual occurrence at sea?

A. That is the usual occurrence there. It ships very quickly, perhaps 8 points at a time, that is, 90 degrees.

Q. What effect has that on the sea?

A. That puts the sea right up in a heap and is very bad for the ship.

Q. What do you call that, what kind of a sea?

A. It is blowing one against the other; it puts it right up to a point. [209]

Q. Is that what you call a cross sea?

A. That is what I call a cross sea.

Q. Is that an ordinary or unusual experience at sea?

A. That is an ordinary experience off of the Horn.

Q. Now, I want to read to you again from this log, page 10:

“Q. On what date did the vessel leave Rotterdam? A. 17th of September, 1907. She was

(Testimony of Hiram Coalfleet Davison.)

cleared on the 17th, and left Rotterdam on the 19th. Q. What was the first port at which she stopped? A. Brest. Q. Where is Brest? A. In France. Q. And how long did she remain there, and on what days? A. She arrived on the 22d at 3 P. M., and left on the 24th at 9 A. M. in the morning. Q. Now, Captain, will you describe the first parts of the voyage, referring to your log, day after day, with reference to the weather which you encountered? A. We left Brest on the 21st at 9 o'clock in the morning. There was a small breeze from the north, shifting from the north to west, and we sailed until the 26th of September, and had fine weather and calm sea. We encountered westerly winds with a choppy sea. Q. On what day? A. The 26th of September. There was a swell until the 28th. Q. What occurred on the 28th? A. The wind hauled to the southwest, freshening and increased, the sea coming heavy rapidly. The wind shifted to the northwest on the 28th at 2 o'clock in the morning. The weather cleared up, but the sea became very heavy. We had very violent squalls, especially during the watch from 8 o'clock in the morning until noon. The weather became cloudy again in the afternoon with [210] squalls, the sea being very heavy, direction west, northwest. From 8 P. M. to midnight, the sea was still heavier, and the squalls more and more violent. Q. Are you still on the 28th? A. Yes, sir; on the 28th the

(Testimony of Hiram Coalfleet Davison.)

weather became fine, and the squalls less and less violent, the wind decreasing rapidly, there being still a squall. There were times when the ship was rolling heavily, the sea coming from abeam. At 4 o'clock in the afternoon, we found an increase of water in the ship's hold. We found 23 centimeters at 4 o'clock. We pumped at once, and cleared the water from the hold in a quarter of an hour. Q. What latitude and longitude was the vessel in on that day, the 29th? A. 38 degrees, 28 minutes north latitude at noon; 17 degrees, 43 minutes west. The vessel was steering south 35 degrees west. Q. Now, go ahead and tell what happened next? A. We saw every day that water was increasing in the hold regularly about one centimeter every hour. Q. What did you do with the pumps during that time? A. We pumped regularly, morning and evening. At 7:20 in the morning and 4:20 at night. Q. For how long a time each time? A. About 20 minutes each time. Q. Did you succeed in controlling the inflow of the water by this pumping? A. By pumping 40 minutes, we cleared the water from the hold. Q. How long did that go on? A. Nothing happened particularly until the 22d of November."

That leads us up to where we had that other weather. That was his testimony upon direct examination regarding the [211] weather shortly after leaving on this voyage. I am going to read now his cross-examination of the same weather, and I want you to listen to this very carefully because when I

(Testimony of Hiram Coalfleet Davison.)

get through I am going to ask you what character of weather you think it was. I want your opinion of it. I am reading from page 34:

"Q. On what day did you leave Brest?

A. 24th of September.

Q. The weather from the time you left Brest up to the 28th day of September, when the leak was sprung, was as fine weather as it was possible to have at sea, was it not?

A. The two or three first days. After that we had a breeze starting at the west, going to southwest, getting fresh, and shifting to the northwest.

Q. But you had no stormy weather up to that time—up to the 18th?

A. I have not examined the log.

Q. Look at your log, and tell us whether the weather was not the ordinary weather that a sailing vessel encounters without any stormy weather.

A. During the nights of the 26th and 27th, we had bad weather.

Q. Describe the weather as it is given in the log."

This is his description given from the log. The Captain read this from the log himself:

"A. From 8 o'clock to midnight of the 26th we had bad weather"—Mr. Page was himself reading from the log.

Mr. PAGE.—Yes.

Mr. CAMPBELL.—Q. "'All sails set.' In the second watch, 'Squally weather; nice breeze; all sails set.' In the third watch, 'Squally weather; nice breeze; all sails set.' In the fourth watch, 'Squally

(Testimony of Hiram Coalfleet Davison.)

weather of little strength, a fine breeze; all sails set.' In the next watch, 'Squally weather; nice breeze; all sails set.' Next watch, 'Cloudy; fine [212] breeze; a few squalls; all sails set.' The next day; 'From midnight of the 27th to midnight of the 28th.' In the first watch, 'Squally weather; strong rain; the wind blows to the southwest, and shifts to the northwest; gaff top-sail"—

Where is your gaff top-sail on that photograph (indicating) ?

A. There is no gaff top-sail.

Q. Where would it be? Show it to the Court.

The COURT.—Mark it there with a pencil.

A. This vessel has not any gaff for a gaff top-sail. That is the gaff top-sail (pointing).

Mr. CAMPBELL.—I will ask to have this second photograph marked Libelants' Exhibit "B" for identification.

(The photograph is marked "Libelants' Exhibit 'B' for Identification.")

Mr. CAMPBELL.—I will ask the clerk to cross off the memorandum on the back of that photograph. It is no part of the exhibit.

Q. Now, this other photograph which purports to be a picture of the bark "Star of Iceland," where is the gaff top-sail on that?

A. This is the gaff top-sail (pointing); it goes between the gaff and the topmast,—on the mizzen top-sail in this case.

Q. And marked what in this photograph?

A. "22."

(Testimony of Hiram Coalfleet Davison.)

Q. Now, I will continue: "And main jib torn, royals and upper topgallant-sails and stay-sails and spanker taken in; unbent the main jib; violent squalls; strong winds; heavy sea; set the topgallant-sails and mizzen stay-sail."

In "Libelants' Exhibit 'B' for Identification," the last photograph I handed to you, will you give me the numbers of the two sails which he set when he set his topgallant-sails [213] and his mizzen stay-sail?

A. Is it main topgallant-sail, did he say, or both?

Q. Both of them. His topgallant-sail and mizzen stay-sail.

A. That would be "16"; "8" and "16" are the topgallant-sails; "13" is the mizzen stay-sail. That is "13" is it not (pointing)?

Mr. HENGSTLER.—I think that is "18."

Mr. CAMPBELL.—Yes, that is "18."

The WITNESS.—"18" then.

Mr. CAMPBELL.—Q. Then the log continues: "Next watch; 'Cloudy weather and squally; strong breeze; heavy sea from the west, northwest; the same sail as during the preceding watch.' Next watch, 'Squally weather; strong weather; strong breeze; furled the mainsail at 6 o'clock.' "

At this point, I want to ask you whether or not it is customary to furl the mainsail at night?

A. It is customary to furl it at any time. That would not make any difference. When we take it in we usually furl it at sea to keep it from blowing away.

Q. Do you know whether or not it is customary for

(Testimony of Hiram Coalfleet Davison.)

shipmasters to furl the mainsail at night in preparation for any weather that might come during the night? A. Yes, sir.

Q. Does the furling of the mainsail at night necessarily indicate that she at that time was encountering violent weather? A. Or expecting bad weather.

Q. Then it goes on: "Next watch on the same day: 'The same weather; very strong swell; violent squalls.' The next day, 'Midnight of the 28th to midnight of the 29th.' In the first watch, 'Fine weather; some squalls; strong breeze becoming less at the end of the watch.' Second watch, 'Fine weather; [214] fine breeze; set the mainsail; royal spanker and stay-sail.'" What would those be on the last photograph that I showed you?

A. Mainsail and royal.

Q. Mainsail, royal, spanker and stay-sail?

A. The mainsail will be "15" on this photograph. The royals "9" and "17."

Mr. HENGSTLER.—Q. That is not "15" but "18"?

A. This is the mizzen stay-sail, which I said was "13" and you said "18." We are getting mixed up. The mainsail is "13." The royals "9" and "17." What were the other sails?

Q. Stay-sail. A. Which stay-sail?

Q. It does not describe which stay-sail. We cannot identify that.

A. There are six stay-sails here.

Q. We will have to get that from the log. Let that pass. Let me go on and finish this log: "In the next

(Testimony of Hiram Coalfleet Davison.)

watch, 'Fine weather; fine breeze; all sails set.' In the next watch, 'Squally weather; the sea falls more and more; all sails set; tested the steam gear; found an increase of water in the hold; sounded 23 centimeters; cleared the pumps.' In the next watch, 'Fine weather; the breeze softens; all sails set.' The next watch, 'Fine weather; light breeze; all sails set.' "

And on that day, did you make any notation in your own handwriting on the log-book with reference to the discovery of water in the hold?

A. Yes, sir; I wrote at the foot of the log not to fail to sound at every watch, and to give an account to the Captain; if the water rises slowly and regularly, they must pump in the morning at 7:20 and in the evening at 4 o'clock.

Q. Does that log correctly state the facts as they occurred at the time with reference to the character of the weather? A. Yes, sir." [215]

Now, after hearing the weather which was detailed—

Mr. HENGSTLER.—May I ask you to add the next sentence?

Mr. CAMPBELL.—Yes. "During all of this time, or any part of this time, was your ship rolling?"

A. Yes, sir. Q. Was that the natural roll of an ordinary ship in that kind of weather, or was it an extraordinary rolling? A. The rolling was caused by this wind which started at the southwest, and shifted to the northwest, the sea having become very heavy by the cross seas, and when the wind shifted

(Testimony of Hiram Coalfleet Davison.)
to the northwest, the wind decreased, and the vessel
not being stayed by the sails, rolled heavily." Is
that far enough, Mr. Hengstler?

Mr. HENGSTLER.—There is a little more of the
same description.

Mr. CAMPBELL.—"Q. Is it not usual if a vessel
rolls very heavily, that is more than is expected of
her, to make an entry in the log that the ship has
been rolling?

A. Generally, but it was neglected.

Q. Was there a laboring of the ship prior to the
leak starting, which was unexpected or unusual?

A. Yes, sir, the day after that night, the wind
shifted from the southwest to the northwest.

Q. Was the laboring of the ship upon that occa-
sion very extraordinary?

A. The ship labored less than she did later after
that storm at the Falkland Islands, but she did labor
very much.

Q. Is it not usual for any ship to labor more or
less in a cross sea without making water?

A. Certainly, the 'Duc d'Aumale' itself did it
many times, probably, but this time she sprang a
leak. [216]

Q. Then that must have come from some weakness
of the ship before she started, did it not. There
must have been some weakness?

A. I don't think so.

Q. How can you account for the ship springing a
leak in weather which was fine, all excepting during

(Testimony of Hiram Coalfleet Davison.)

one or two days at the most, and that weather not very bad, no storms?

A. I cannot give any other explanation.

Q. Then the only explanation that you have to give is that the ship strained in this kind of weather, and started a leak. That is the only explanation you can give? A. Yes, sir.

Q. After the leak was started, how long did the good weather continue?

A. Variable weather, up to the storm that we had in the west of the Falkland Islands."

Now, Captain, what kind of weather would you characterize the weather so described in this log?

Mr. HENGSTLER.—I shall have to object to this question, if your Honor please, upon the ground that the weather is described by the captain and it is for your Honor to determine what the weather is, and not for this witness to determine as to what kind of weather it is.

Mr. CAMPBELL.—I do not suppose that the Court has been to sea any more than any of the rest of us.

The COURT.—Let him answer the question.

A. The weather you have described was from fine weather up to a moderate gale and back to fine weather again, a moderate gale from southwest to northwest.

Mr. CAMPBELL.—Q. State whether or not that is the character of weather that might be expected on a voyage? A. Certainly, in that position too.

Q. In that position? A. Yes, sir. [217]

(Testimony of Hiram Coalfleet Davison.)

Q. Was he at any time shortened down under storm sail?

A. Yes, sir, the sail you have described here. It all depends on what position the ship is to the wind. If she was running with the wind aft she would *probably all* sails in a moderate gale; if she was hauled close to the wind, that is, with the wind on the side, she would be under lower top-sails and foresails, or perhaps main or perhaps fore upper top-sails.

Q. Suppose that you were master of that vessel and began to shorten sail and you would have this fair weather he described, with all sails set, and began to shorten sail, what sail would you first take in.

A. We would naturally take in these upper stay-sails and royals.

Mr. HENGSTLER.—My objection applies to all this line of testimony.

The COURT.—Yes.

Mr. CAMPBELL.—Q. What would you take in next?

A. The next would be the main-sail and topgallant-sails.

Q. Then what would you take in?

A. That would be the usual procedure.

Q. Then what would you take in next?

A. The upper top-sails and then the foresail.

Q. You would take in your upper top-sails before your foresail would be taken in?

A. Yes, sir; we usually do that.

Q. So then you would have her trimmed down so

(Testimony of Hiram Coalfleet Davison.)

that you would have her under lower top-sails and foresail?

A. Yes, sir; the last sails left would be probably the two lower top-sails. As a rule we never take them in unless they come themselves. [218]

Cross-examination.

Mr. HENGSTLER.—Q. Do you know the French bark "Duc d'Aumale"?

A. No, I have never seen her to my knowledge.

Q. How often did you say you were around Cape Horn?

A. I have only been around once, and that was from west to east; that was considered the easy way to go around.

Q. You were once in the neighborhood which you have described north of Cape Horn, where the storm occurred, in November, was it?

A. About November, yes.

Q. You have only been in that vicinity once?

A. Only the once.

Q. Is the laboring and the straining of a vessel dependent entirely upon the winds that she encounters.

A. No, not in all cases; sometimes a ship will be in a bad sea in a calm and she will labor because she will roll so heavily.

Q. She will roll in a bad sea if there is a heavy swell on and she will roll very heavily if there is a perfect calm, will she not? A. Yes, in some cases.

Q. So, Captain, is it possible therefore to indicate the condition of the sea by the sails carried by the vessel? A. I do not quite catch your question.

(Testimony of Hiram Coalfleet Davison.)

Q. Is it possible to describe and to indicate the condition of the sea, as to whether it is a calm sea or a heavy sea, from the sails which are carried by a vessel on that sea?

Q. Oh, yes, approximately, but not in all cases. Sometimes there is more sea than at others, in the case of the wind shifting, making a cross sea. At other times there is a heavy sea coming up perhaps with no wind; it is made by wind at some other place.

[219]

Q. And a vessel strains in a heavy sea, does she not?

A. Yes, she certainly strains in a heavy sea.

Q. In other words, the vessel does not strain because there is a certain wind but the vessel strains because the sea is heavy?

A. She will strain with a heavy wind to a certain extent.

Q. But usually because the heavy wind is followed by a heavy sea or accompanied by a heavy sea; that is the reason, is it not?

A. That is the usual thing, yes.

Q. Now, Captain, you say it is customary to furl the mainsail of a vessel at night if you expect a heavy storm?

A. Oh, it is not customary; some might do it as a precaution and others might not; that is simply a matter with the man that had charge of it.

Q. There is no custom to furl the mainsail simply because it is night time? A. No.

Q. That has nothing to do with it at all?

(Testimony of Hiram Coalfleet Davison.)

A. No.

Q. The wind and the storm cause the captain to furl the mainsail if it is sufficient of a storm; is that the fact?

A. Yes, sir. If he is expecting a storm or bad weather he might do it as a precaution.

Q. He sometimes might do it before the storm actually comes, simply as a matter of precaution?

A. Yes, sir.

Q. According to your view, the weather which has been described to you by Mr. Campbell on November 22d was a moderate gale, was it not?

A. On November 22d?

Q. No, on September 28th.

A. A moderate gale, yes; on September 28th, yes, probably what we would call a moderate gale.

Q. Another captain might describe it by another term, might he not? [220]

A. Well, there is a nautical term that we use by numbers; what we would call a moderate gale they would call No. 7, Beaufort Scale.

Q. What is the next severe weather on the Beaufort Scale? A. No. 8.

Q. What do you call that?

A. I believe they still call that a strong gale.

Q. Some captains would describe a particular gale as No. 7 and other captains would describe it as No. 8; that depends upon their opinion and their past experience, does it not? A. Yes.

Q. Captain, is your vessel consigned to Meyer, Wilson & Co.?

(Testimony of Hiram Coalfleet Davison.)

A. No. At present it is to J. & A. Brown.

Q. Have Meyer, Wilson & Co., any connection with your vessel in any way?

A. Not to my knowledge. I do not know the people myself personally.

Redirect Examination.

Mr. CAMPBELL.—Q. Captain, has any member of Meyer, Wilson & Co., or have I, previous to the time you went on the stand, ever described to you this weather?

A. No; I do not know a member of Meyer & Wilson's firm, and I have only met you outside here.

Q. I will ask you whether or not, in your judgment, the wind and weather described in the log on the 26th, 27th, 28th and 29th of September would produce a sea any heavier than what might be usually expected?

A. Well, I do not know that it is heavier than what would be usually expected; wind shifting that way from one point to another, that is a difference of nearly 90 degrees, would make a [221] cross sea and probably there would be as much water on her decks with that amount of sail on than if she had nothing but lower top-sails. In fact, if she was a very wet vessel and deep it is not unusual to have the decks full of water with all sail on—the decks full of water at times.